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CHAPTER 1078

An act to amend Sections 817, 1523, 1524, 1525, 1528, and 1529 of the Penal Code, and to amend Section 40300.5 of the Vehicle Code, relating to arrest.

[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 817 of the Penal Code is amended to read:

817. (a) (1) When a declaration of probable cause is made by a peace officer of this state, in accordance with subdivision (b) or (c), the magistrate, if, and only if, satisfied from the declaration that there exists probable cause that the offense described in the declaration has been committed and that the defendant described therein has committed the offense, shall issue a warrant of probable cause for the arrest of the defendant.

(2) The warrant of probable cause for arrest shall not begin a complaint process pursuant to Section 740 or 813. The warrant of probable cause for arrest shall have the same authority for service and the same time limitations as that of an arrest warrant issued pursuant to Section 813.

(b) The declaration in support of the warrant of probable cause for arrest shall be a sworn statement made in writing.

(c) In lieu of the written declaration required in subdivision (b), the magistrate may take an oral statement under oath under either of the following conditions:

(1) The oath shall be taken under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be the declaration for the purposes of this section. The recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative, the sworn oral statement may be recorded by a certified court reporter who shall certify the transcript of the statement, after which the magistrate receiving it shall certify the transcript, which shall be filed with the clerk of the court.

(2) The oath is made using telephone and facsimile transmission equipment, under all of the following conditions:

(A) The oath is made during a telephone conversation with the magistrate, after which the declarant shall sign his or her declaration in support of the warrant of probable cause for arrest. The proposed warrant and all supporting declarations and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment.

(B) The magistrate shall confirm with the declarant the receipt of the warrant and the supporting declarations and attachments. The

magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the declarant's signature is acknowledged as genuine.

(C) If the magistrate decides to issue the warrant, he or she shall sign the warrant, note on the warrant the exact date and time of the issuance of the warrant, and indicate on the warrant that the oath of the declarant was administered orally over the telephone. The completed warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment the signed warrant to the declarant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the declarant to write the words "duplicate original" on the copy of the completed warrant transmitted to the declarant and this document shall be deemed to be a duplicate original warrant.

(d) Before issuing a warrant, the magistrate may examine under oath the person seeking the warrant and any witness the person may produce, take the written declaration of the person or witness, and cause the person or witness to subscribe the declaration.

(e) A warrant of probable cause for arrest shall contain the information required pursuant to Sections 815 and 815a.

(f) A warrant of probable cause for arrest may be in substantially the following form:

County of _____, State of California.

The people of the State of California to any peace officer of the STATE:

Proof by declaration under penalty of perjury having been made this day to me by _____,
(name of affiant)

I find that there is probable cause to believe that the crime(s) of _____
(designate the crime/s)
has (have) been committed by the defendant named and described below.

Therefore, you are commanded to arrest _____ and to bring the defendant
(name of defendant)
before any magistrate in _____ County pursuant to Sections 821, 825, 826, and 848 of the Penal Code.

Defendant is admitted to bail in the amount of _____ dollars ($_____).

Time Issued: _____ _____
(Signature of the Judge)
Dated: _____ Judge of the _____ Court

(g) An original warrant of probable cause for arrest or the duplicate original warrant of probable cause for arrest shall be sufficient for booking a defendant into custody.

(h) Once the defendant named in the warrant of probable cause for arrest has been taken into custody, the agency which obtained the warrant shall file a "certificate of service" with the clerk of the issuing court. The certificate of service shall contain all of the following:

(1) The date and time of service.

(2) The name of the defendant arrested.

(3) The location of the arrest.

(4) The location where the defendant was incarcerated.

SEC. 1.5. Section 1523 of the Penal Code is amended to read:

1523. A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate.

SEC. 2. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he or she may have delivered it for the purpose of concealing it or preventing its being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

(3) A warrant must, whenever practicable, be served during normal business hours. In addition, a warrant must be served upon a party who appears to have possession or control of the items sought. If after reasonable efforts, the party serving the warrant is unable to locate that person, the special master shall seal and return to the court for determination by the court any item that appears to be privileged as provided by law.

(d) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity which caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code,

relating to claims and actions against public entities and public employees. In selecting the special master the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in such a manner as to permit the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

SEC. 2.1. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he or she may have delivered it for the purpose of concealing it or preventing its being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court for determination by the court any item that appears to be privileged as provided by law.

(d) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public

employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in such a manner as to permit the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

SEC. 3. Section 1525 of the Penal Code is amended to read:

1525. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched.

The application shall specify when applicable, that the place to be searched is in the possession or under the control of an attorney, physician, psychotherapist or clergyman.

SEC. 4. Section 1528 of the Penal Code is amended to read:

1528. (a) If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he or she must issue a search warrant, signed by him or her with his or her name of office, to a peace officer in his or her county, commanding him or her forthwith to search the person or place named for the property or things or person or persons

specified, and to retain the property or things in his or her custody subject to order of the court as provided by Section 1536.

(b) The magistrate may orally authorize a peace officer to sign the magistrate's name on a duplicate original warrant. A duplicate original warrant shall be deemed to be a search warrant for the purposes of this chapter, and it shall be returned to the magistrate as provided for in Section 1537. The magistrate shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant and the duplicate original warrant with the clerk of the court as provided for in Section 1541.

SEC. 5. Section 1529 of the Penal Code is amended to read:

1529. The warrant shall be in substantially the following form:

County of _____.

The people of the State of California to any sheriff, constable, marshal, or police officer in the County of _____:

Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, according to Section 1524, or, if the affidavit be not positive, that there is probable cause for believing that _____ stating the ground of the application in the same manner), you are therefore commanded, in the daytime (or at any time of the day or night, as the case may be, according to Section 1533), to make search on the person of C. D. (or in the house situated _____, describing it or any other place to be searched, with reasonable particularity, as the case may be) for the following property, thing, things, or person: (describing the property, thing, things, or person with reasonable particularity); and, in the case of a thing or things or personal property, if you find the same or any part thereof, to bring the thing or things or personal property forthwith before me (or this court) at (stating the place).

Given under my hand, and dated this _____ day of _____, A.D. 19____.

E. F., Judge of the Municipal Court (or as the case may be).

SEC. 6. Section 40300.5 of the Vehicle Code is amended to read:

40300.5. In addition to the authority to make an arrest without a warrant pursuant to paragraph (1) of subdivision (a) of Section 836 of the Penal Code, a peace officer may, without a warrant, arrest a person when the officer has reasonable cause to believe that the person had been driving while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug when any of the following exists:

(a) The person is involved in a traffic accident.

(b) The person is observed in or about a vehicle that is obstructing a roadway.

(c) The person will not be apprehended unless immediately arrested.

(d) The person may cause injury to himself or herself or damage property unless immediately arrested.

(e) The person may destroy or conceal evidence of the crime unless immediately arrested.

SEC. 7. Nothing in this act is intended to repeal or affect paragraph (3) of subdivision (a) of Section 4 of Chapter 563 of the Statutes of 1995.

SEC. 8. (a) The purpose of Sections 1.5 to 5, inclusive, of this act, which amend Sections 1523, 1524, 1525, 1528, and 1529 of the Penal Code, is to provide a mechanism for compliance with Steagald v. United States, 68 L. Ed. 2d 38.

(b) Nothing in Sections 1.5 to 5, inclusive, of this act shall be construed as altering any of the following:

(1) The law relating to the standing of a person to raise the issue of an unreasonable search or seizure.

(2) The law relating to the status of the person conducting the search or seizure.

(3) The law relating to the burden of proof regarding the search or seizure.

(4) The law relating to the reasonableness of a search or seizure, regardless of any warrant that may have been utilized.

(5) The admissibility of evidence as the result of a search or seizure.

SEC. 9. The Legislature finds and declares that the changes made by Sections 1.5, 2, and 3 to 5, inclusive, of this act are declaratory of existing law.

SEC. 10. Section 2.1 of this bill incorporates amendments to Section 1524 of the Penal Code proposed by both this bill and AB 1734. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section 1524 of the Penal Code, and (3) this bill is enacted after AB 1734, in which case Section 2 of this bill shall not become operative.

CHAPTER 1079

An act to amend Sections 311, 311.1, 311.2, 311.3, 311.4, 311.11, 312.3, and 1524 of, and to add Sections 312.6 and 312.7 to, the Penal Code, relating to obscene matter.

[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 311 of the Penal Code is amended to read:

311. As used in this chapter, the following definitions shall control the meaning of the respective terms:

(a) "Obscene matter" means matter taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct; and which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the matter taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of the matters, the fact that the defendant knew that the matter depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making that determination.

(b) "Matter" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials. "Matter" also means live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter or live conduct.

(f) "Exhibit" means to show.

(g) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, taken as a whole, which to the average person, applying contemporary statewide standards to the prurient interest and is conduct which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) When it appears from the nature of the conduct or the circumstances of its production, presentation or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the conduct and can justify the conclusion that the conduct lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the live conduct taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of the matters, the fact that the defendant knew that the live conduct depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making that determination.

(h) The Legislature expresses its approval of the holding of People v. Cantrell, 7 Cal. App. 4th 523, that, for the purposes of this chapter, matter that "depicts a person under the age of 18 years personally engaging in personally stimulating sexual conduct" is limited to visual works that depict that conduct.

SEC. 2. Section 311.1 of the Penal Code is amended to read:

311.1. (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, with intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, shall be punished either by imprisonment in the county jail for up to one year, by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment, or by imprisonment in the state prison, by a fine not to exceed ten thousand dollars ($10,000), or by the fine and imprisonment.

(b) This section does not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(c) This section does not apply to matter which depicts a child under the age of 18, which child is legally emancipated, including lawful conduct between spouses when one or both are under the age of 18.

(d) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

SEC. 3. Section 311.2 of the Penal Code is amended to read:

311.2. (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars ($50,000).

(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars ($100,000), in the absence of a finding that the defendant would be incapable of paying that fine, or by both that fine and imprisonment.

(c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, with intent to distribute or exhibit to, or

to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is guilty of a felony.

(d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, with intent to distribute or exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision.

(e) Subdivisions (a) to (d), inclusive, do not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses, to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(f) This section does not apply to matter that depicts a legally emancipated child under the age of 18 years or to lawful conduct between spouses when one or both are under the age of 18 years.

(g) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or to perform related activities in providing telephone services.

SEC. 4. Section 311.3 of the Penal Code is amended to read:

311.3. (a) A person is guilty of sexual exploitation of a child when he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or

computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip in which a person who is under the age of 18 years is engaged in an act of sexual conduct.

(b) As used in this section, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals or pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.

(6) Defecation or urination for the purpose of sexual stimulation of the viewer.

(c) Subdivision (a) does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(d) Every person who violates subdivision (a) shall be punished by a fine of not more than two thousand dollars ($2,000) or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the person has been previously convicted of a violation of subdivision (a) or any section of this chapter, he or she shall be punished by imprisonment in the state prison.

(e) The provisions of this section do not apply to an employee of a commercial film developer who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, provided that the employee has no financial interest in the commercial developer by which he or she is employed.

(f) Subdivision (a) does not apply to matter that is unsolicited and is received without knowledge or consent through a facility, system, or network over which the person or entity has no control.

SEC. 5. Section 311.4 of the Penal Code is amended to read:

311.4. (a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, is, for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars ($50,000).

(b) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip or live performance involving sexual conduct by a minor under the age of 18 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip or live performance involving sexual conduct by a minor under the age of 18 years alone or with other persons or animals, is guilty of a felony. It is not necessary to prove commercial purposes in order to establish a violation of this subdivision.

(d) As used in subdivisions (b) and (c), "sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal-oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or the pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or

between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.

(e) This section does not apply to a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18 years.

(f) In every prosecution under this section involving a minor under the age of 14 years at the time of the offense, the age of the victim shall be pled and proven for the purpose of the enhanced penalty provided in Section 647.6. Failure to plead and prove that the victim was under the age of 14 years at the time of the offense is not a bar to prosecution under this section if it is proven that the victim was under the age of 18 years at the time of the offense.

SEC. 5.5. Section 311.4 of the Penal Code is amended to read:

311.4. (a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, is, for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars ($50,000).

(b) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or live performance involving sexual conduct by a minor under the age of 18 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or

assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or live performance involving sexual conduct by a minor under the age of 18 years alone or with other persons or animals, is guilty of a felony. It is not necessary to prove commercial purposes in order to establish a violation of this subdivision.

(d) (1) As used in subdivisions (b) and (c), "sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal-oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or the pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.

(2) As used in subdivisions (b) and (c), "matter" means any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, or any other computer-related equipment or computer-generated image that contains or incorporates in any manner, any film, filmstrip, photograph, negative, slide, photocopy, videotape, or video laser disc.

(e) This section does not apply to a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18 years.

(f) In every prosecution under this section involving a minor under the age of 14 years at the time of the offense, the age of the victim shall be pled and proven for the purpose of the enhanced penalty provided in Section 647.6. Failure to plead and prove that the victim was under the age of 14 years at the time of the offense is not a bar to prosecution under this section if it is proven that the victim was under the age of 18 years at the time of the offense.

SEC. 6. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other

computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a public offense and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) If a person has been previously convicted of a violation of this section, he or she is guilty of a felony and shall be punished by imprisonment of two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) For purposes of this section, matter as defined in subdivision (b) of Section 311, also includes developed or undeveloped film, negatives, photocopies, filmstrips, slides, and videotapes, the production of which involves the use of a child under the age of 18 years. This section shall not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor shall it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 6.5. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a public offense and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) If a person has been previously convicted of a violation of this section, he or she is guilty of a felony and shall be punished by imprisonment for two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 7. Section 312.3 of the Penal Code is amended to read:

312.3. (a) Matter which depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct as defined in Section 311.4 and which is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to this section.

(b) An action to forfeit matter described in subdivision (a) may be brought by the Attorney General, the district attorney, county counsel, or the city attorney. Proceedings shall be initiated by a petition of forfeiture filed in the superior court of the county in which the matter is located.

(c) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds, which notice shall state that any interested party may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notices cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. All notices shall set forth the time within which a claim of interest in the property seized is required to be filed.

(d) (1) Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, county counsel, or city attorney, as appropriate.

(2) If, at the end of the time set forth in paragraph (1), an interested person has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of compliance with subdivision (c).

(e) The burden shall be on the petitioner to prove beyond a reasonable doubt that matter is subject to forfeiture pursuant to this section.

(f) It shall not be necessary to seek or obtain a criminal conviction prior to the entry of an order for the destruction of matter pursuant to this section. Any matter described in subdivision (a) which is in the possession of any city, county, city and county, or state official or agency, including found property, or property obtained as the result of a case in which no trial was had or which has been disposed of by way of dismissal or otherwise than by way of conviction may be ordered destroyed.

(g) A court order for destruction of matter described in subdivision (a) may be carried out by a police or sheriff's department

or by the Department of Justice. The court order shall specify the agency responsible for the destruction.

(h) As used in this section, "matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines, or materials. "Matter" also means any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip.

(i) This section shall not apply where the minor depicted is lawfully emancipated, including lawful conduct between spouses when one or more are under the age of 18.

(j) It shall be a defense in any forfeiture proceeding that the matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.

SEC. 8. Section 312.6 is added to the Penal Code, to read:

312.6. (a) It does not constitute a violation of this chapter for a person or entity solely to provide access or connection to or from a facility, system, or network over which that person or entity has no control, including related capabilities that are incidental to providing access or connection. This subdivision does not apply to an individual or entity that is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing, or knowing distribution of communications that violate this chapter.

(b) An employer is not liable under this chapter for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

(c) It is a defense to prosecution under this chapter and in any civil action that may be instituted based on a violation of this chapter that a person has taken reasonable, effective, and appropriate actions in good faith to restrict or prevent the transmission of, or access to, a communication specified in this chapter.

SEC. 9. Section 312.7 is added to the Penal Code, to read:

312.7. Nothing in this chapter shall be construed to apply to interstate services or to any other activities or actions for which states are prohibited from imposing liability pursuant to paragraph (4) of subsection (g) of Section 223 of Title 47 of the United States Code.

SEC. 10. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he or she may have delivered it for the purpose of concealing it or preventing its being discovered.

(4) When the property or things to be seized consist of any item or constitutes any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(b) The property or things described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession it may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of

the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court for determination by the court any item that appears to be privileged as provided by law.

(d) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in such a manner as to permit the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

SEC. 11. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he or she may have delivered it for the purpose of concealing it or preventing its being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim

that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court for determination by the court any item that appears to be privileged as provided by law.

(d) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in such a manner as to permit the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams,

ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 13. Section 11 of this bill incorporates amendments to Section 1524 of the Penal Code proposed by both this bill and SB 1379. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section 1524 of the Penal Code, and (3) this bill is enacted after SB 1379, in which case Section 10 of this bill shall not become operative.

SEC. 14. (a) Section 5.5 of this bill incorporates amendments to Section 311.4 of the Penal Code proposed by both this bill and AB 295. 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 311.4 of the Penal Code, and (3) this bill is enacted after AB 295, in which case Section 5 of this bill shall not become operative.

(b) Section 6.5 of this bill incorporates amendments to Section 311.11 of the Penal Code proposed by both this bill and AB 295. 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 311.11 of the Penal Code, and (3) this bill is enacted after AB 295, in which case Section 6 of this bill shall not become operative.

CHAPTER 1080

An act to amend Sections 311, 311.1, 311.2, 311.3, 311.4, 311.11, 312.3, and 11166 of, and to add Sections 312.6 and 312.7 to, the Penal Code, relating to pornography.

[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 311 of the Penal Code is amended to read:

311. As used in this chapter, the following definitions apply:

(a) "Obscene matter" means matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, if circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and may justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the matter taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of those matters, the fact that the defendant knew that the matter depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor that may be considered in making that determination.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material, or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction, or any other article, equipment, machine, or material. "Matter" also means live or recorded telephone messages if transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(d) "Distribute" means transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter or live conduct.

(f) "Exhibit" means show.

(g) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, taken as a whole, that to the average person, applying contemporary statewide standards appeals to the prurient interest and is conduct that, taken as a whole, depicts or describes sexual conduct in a patently offensive way and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the conduct or the circumstances of its production, presentation, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, if circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the conduct and may justify the conclusion that the conduct lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the live conduct taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of those matters, the fact that the defendant knew that the live conduct depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor that may be considered in making that determination.

(h) The Legislature expresses its approval of the holding of People v. Cantrell, 7 Cal. App. 4th 523, that, for the purposes of this chapter, matter that "depicts a person under the age of 18 years personally engaging in personally stimulating sexual conduct" is limited to visual works that depict that conduct.

SEC. 2. Section 311.1 of the Penal Code is amended to read:

311.1. (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, shall be punished either by imprisonment in the county jail for up to one year, by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment, or by imprisonment in the state prison, by a fine not to exceed ten thousand dollars ($10,000), or by the fine and imprisonment.

(b) This section does not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(c) This section does not apply to matter which depicts a child under the age of 18, which child is legally emancipated, including lawful conduct between spouses when one or both are under the age of 18.

(d) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

SEC. 3. Section 311.2 of the Penal Code is amended to read:

311.2. (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars ($50,000).

(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars ($100,000), in the absence of a finding that the defendant would be incapable of paying such a fine, or by both that fine and imprisonment.

(c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a misdemeanor and shall be punished by imprisonment in

the county jail for up to one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is guilty of a felony.

(d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision.

(e) Subdivisions (a) to (d), inclusive, shall not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(f) This section shall not apply to matter which depicts a child under the age of 18, which child is legally emancipated, including lawful conduct between spouses when one or both are under the age of 18.

(g) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

SEC. 3.1. Section 311.2 of the Penal Code is amended to read:

311.2. (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars ($50,000).

(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars ($100,000), in the absence of a finding that the defendant would be incapable of paying such a fine, or by both that fine and imprisonment.

(c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is guilty of a felony.

(d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer

hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision.

(e) Subdivisions (a) to (d), inclusive, do not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses, to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(f) This section does not apply to matter that depicts a legally emancipated child under the age of 18 years or to lawful conduct between spouses when one or both are under the age of 18 years.

(g) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or to perform related activities in providing telephone services.

SEC. 3.2. Section 311.2 of the Penal Code is amended to read:

311.2. (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars ($50,000).

(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints, with intent to distribute or to exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars ($100,000), in the absence of a finding that the defendant would be

incapable of paying such a fine, or by both that fine and imprisonment.

(c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or four years. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision.

(e) Subdivisions (a) to (d), inclusive, shall not apply to the activities of law enforcement or prosecuting agencies in the investigation or prosecution of criminal offenses, to legitimate

medical, scientific, or educational activities, or to lawful conduct between spouses.

(f) This section shall not apply to matter which depicts a child under the age of 18, which child is legally emancipated, including lawful conduct between spouses when one or both are under the age of 18.

(g) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

SEC. 3.3. Section 311.2 of the Penal Code is amended to read:

311.2. (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars ($50,000).

(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars ($100,000), in the absence of a finding that the defendant would be incapable of paying such a fine, or by both that fine and imprisonment.

(c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer

hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished in the state prison for 16 months, or two or three years. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision.

(e) Subdivisions (a) to (d), inclusive, do not apply to the activities of law enforcement or prosecuting agencies in the investigation or prosecution of criminal offenses, to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(f) This section does not apply to matter that depicts a legally emancipated child under the age of 18 years or to lawful conduct between spouses when one or both are under the age of 18 years.

(g) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or to perform related activities in providing telephone services.

SEC. 4. Section 311.3 of the Penal Code is amended to read:

311.3. (a) A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct.

(b) As used in this section, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation, for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals or pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(6) Defecation or urination for the purpose of sexual stimulation of the viewer.

(c) Subdivision (a) does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(d) Every person who violates subdivision (a) shall be punished by a fine of not more than two thousand dollars ($2,000) or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the person has been previously convicted of a violation of subdivision (a) or any section of this chapter, he or she shall be punished by imprisonment in the state prison.

(e) The provisions of this section do not apply to an employee of a commercial film developer who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, provided that the employee has no financial interest in the commercial developer by which he or she is employed.

SEC. 4.1. Section 311.3 of the Penal Code is amended to read:

311.3. (a) A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated

image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct.

(b) As used in this section, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.

(6) Defecation or urination for the purpose of sexual stimulation of the viewer.

(c) Subdivision (a) does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(d) Every person who violates subdivision (a) shall be punished by a fine of not more than two thousand dollars ($2,000) or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. If the person has been previously convicted of a violation of subdivision (a) or any section of this chapter, he or she shall be punished by imprisonment in the state prison.

(e) The provisions of this section do not apply to an employee of a commercial film developer who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, provided that the employee has no financial interest in the commercial developer by which he or she is employed.

(f) Subdivision (a) does not apply to matter that is unsolicited and is received without knowledge or consent through a facility, system, or network over which the person or entity has no control.

SEC. 4.2. Section 311.3 of the Penal Code is amended to read:

311.3. (a) A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct.

(b) As used in this section, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.

(6) Defecation or urination for the purpose of sexual stimulation of the viewer.

(c) Subdivision (a) does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(d) Any person who violates subdivision (a) shall be punished by a fine not to exceed two thousand dollars ($2,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. If the person previously has been convicted of a violation of subdivision (a) or any section of this chapter, he or she shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(e) The provisions of this section do not apply to an employee of a commercial film developer who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, provided that the employee has no financial interest in the commercial developer by which he or she is employed.

SEC. 4.3. Section 311.3 of the Penal Code is amended to read:

311.3. (a) A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct.

(b) As used in this section, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.

(6) Defecation or urination for the purpose of sexual stimulation of the viewer.

(c) Subdivision (a) does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(d) Any person who violates subdivision (a) shall be punished by a fine not to exceed two thousand dollars ($2,000) or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment. If the person previously has been convicted of a violation of subdivision (a) or any section in this chapter, he or she shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(e) The provisions of this section do not apply to an employee of a commercial film developer who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, provided that the employee has no financial interest in the commercial developer by which he or she is employed.

(f) Subdivision (a) does not apply to matter that is unsolicited and is received without knowledge or consent through a facility, system, or network over which the person or entity has no control.

SEC. 5. Section 311.4 of the Penal Code is amended to read:

311.4. (a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, is, for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars ($50,000).

(b) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc,

computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, is guilty of a felony. It is not necessary to prove commercial purposes in order to establish a violation of this subdivision.

(d) (1) As used in subdivisions (b) and (c), "sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.

(2) As used in subdivisions (b) and (c), "matter" means any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, or any other computer-related equipment or computer-generated image that contains or incorporates in any manner, any film, filmstrip, photograph, negative, slide, photocopy, videotape, or video laser disc.

(e) This section does not apply to a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.

(f) In every prosecution under this section involving a minor under the age of 14 years at the time of the offense, the age of the victim shall be pled and proven for the purpose of the enhanced penalty provided in Section 647.6. Failure to plead and prove that the victim was under the age of 14 years at the time of the offense is not a bar to prosecution under this section if it is proven that the victim was under the age of 18 years at the time of the offense.

SEC. 5.5. Section 311.4 of the Penal Code is amended to read:

311.4. (a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, for a first offense, punishable in a county jail not exceeding one year or in the state prison. If the person has been previously convicted of any violation of this section, he or she shall be punished by imprisonment in the state prison for two, three, or four years and a fine not exceeding fifty thousand dollars ($50,000).

(b) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a or live performance involving sexual conduct by a minor under the age of 18 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information,

data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or four years. It is not necessary to prove commercial purposes in order to establish a violation of this subdivision.

(d) (1) As used in subdivisions (b) and (c), "sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal-oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or the pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.

(2) As used in subdivisions (b) and (c), "matter" means any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, or any other computer-related equipment or computer-generated image that contains or incorporates in any manner, any film, filmstrip, photograph, negative, slide, photocopy, videotape, or video laser disc.

(e) This section does not apply to a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.

(f) In every prosecution under this section involving a minor under the age of 14 years at the time of the offense, the age of the victim shall be pled and proven for the purpose of the enhanced penalty provided in Section 647.6. Failure to plead and prove that the victim was under the age of 14 years at the time of the offense is not a bar to prosecution under this section if it is proven that the victim was under the age of 18 years at the time of the offense.

(g) A felony conviction under subdivision (a) shall not constitute a current felony conviction for purposes of subdivisions (b) to (i), inclusive, of Section 667 or Section 1170.12.

SEC. 6. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware,

computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a public offense and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) If a person has been previously convicted of a violation of this section, he or she is guilty of a felony and shall be punished by imprisonment for two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 6.5. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

(b) If a person has been previously convicted of a violation of this section, he or she is guilty of a felony and shall be punished by imprisonment of two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 7. Section 312.3 of the Penal Code is amended to read:

312.3. (a) Matter that depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct as

defined in Section 311.4 and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to this section.

(b) An action to forfeit matter described in subdivision (a) may be brought by the Attorney General, the district attorney, county counsel, or the city attorney. Proceedings shall be initiated by a petition of forfeiture filed in the superior court of the county in which the matter is located.

(c) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds. The notice shall state that any interested party may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. All notices shall set forth the time within which a claim of interest in the property seized is required to be filed.

(d) (1) Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, county counsel, or city attorney, as appropriate.

(2) If, at the end of the time set forth in paragraph (1), an interested person has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of compliance with subdivision (c).

(e) The burden is on the petitioner to prove beyond a reasonable doubt that matter is subject to forfeiture pursuant to this section.

(f) It is not necessary to seek or obtain a criminal conviction prior to the entry of an order for the destruction of matter pursuant to this section. Any matter described in subdivision (a) that is in the possession of any city, county, city and county, or state official or agency, including found property, or property obtained as the result of a case in which no trial was had or that has been disposed of by way of dismissal or otherwise than by way of conviction may be ordered destroyed.

(g) A court order for destruction of matter described in subdivision (a) may be carried out by a police or sheriff's department or by the Department of Justice. The court order shall specify the agency responsible for the destruction.

(h) As used in this section, "matter" means any book, magazine, newspaper, or other printed or written material or any picture,

drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines, or materials. "Matter" also means any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner any film or filmstrip.

(i) This section does not apply to a depiction of a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.

(j) It is a defense in any forfeiture proceeding that the matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.

SEC. 8. Section 312.6 is added to the Penal Code, to read:

312.6. (a) It does not constitute a violation of this chapter for a person or entity solely to provide access or connection to or from a facility, system, or network over which that person or entity has no control, including related capabilities that are incidental to providing access or connection. This subdivision does not apply to an individual or entity that is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing, or knowing distribution of communications that violate this chapter.

(b) An employer is not liable under this chapter for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

(c) It is a defense to prosecution under this chapter and in any civil action that may be instituted based on a violation of this chapter that a person has taken reasonable, effective, and appropriate actions in good faith to restrict or prevent the transmission of, or access to, a communication specified in this chapter.

SEC. 9. Section 312.7 is added to the Penal Code, to read:

312.7. Nothing in this chapter shall be construed to apply to interstate services or to any other activities or actions for which states are prohibited from imposing liability pursuant to Paragraph (4) of subsection (g) of Section 223 of Title 47 of the United States Code.

SEC. 10. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been

the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 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, which shall be reported only to the county welfare department. A county probation or welfare department also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement

agency also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 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.

SEC. 12. (a) Section 3.1 of this bill incorporates amendments to Section 311.2 of the Penal Code proposed by both this bill and AB 1734. 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 311.2 of the Penal Code, (3) AB 1881 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1734, in which case Sections 3, 3.2, and 3.3 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 311.2 of the Penal Code proposed by both this bill and AB 1881. 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 311.2 of the Penal Code, (3) AB 1734 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1881, in which case Sections 3, 3.1, and 3.3 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 311.2 of the Penal Code proposed by this bill, AB 1734, and AB 1881. 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 311.2 of the Penal Code, and (3) this bill is enacted after AB 1734 and AB 1881, in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative.

SEC. 13. (a) Section 4.1 of this bill incorporates amendments to Section 311.3 of the Penal Code proposed by both this bill and AB 1734. 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 311.3 of the Penal Code, (3) AB 1881 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1734, in which case Sections 4, 4.2, and 4.3 of this bill shall not become operative.

(b) Section 4.2 of this bill incorporates amendments to Section 311.3 of the Penal Code proposed by both this bill and AB 1881. 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 311.3 of the Penal Code, (3) AB 1734 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1881, in which case Sections 4, 4.1, and 4.3 of this bill shall not become operative.

(c) Section 4.3 of this bill incorporates amendments to Section 311.3 of the Penal Code proposed by this bill, AB 1734, and AB 1881. 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 311.3 of the Penal Code, and (3) this bill is enacted after AB 1734 and AB 1881, in which case Sections 4, 4.1, and 4.2 of this bill shall not become operative.

SEC. 14. Section 5.5 of this bill incorporates amendments to Section 311.4 of the Penal Code proposed by both this bill and AB 1881. 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 311.4 of the Penal Code, and (3) this bill is enacted after AB 1881, in which case Section 5 of this bill shall not become operative.

SEC. 15. Section 6.5 of this bill incorporates amendments to Section 311.11 of the Penal Code proposed by both this bill and AB 1881. 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 311.11 of the Penal Code, and (3) this bill is enacted after AB 1881, in which case Section 6 of this bill shall not become operative.

CHAPTER 1081

An act to amend Sections 11165.8, 11166, 11166.5, 11170, and 11172 of, and to add Section 11165.17 to, the Penal Code, relating to child abuse.

[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 11165.8 of the Penal Code is amended to read:

11165.8. As used in this article, "health practitioner" means any of the following:

(a) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, or any other person who is currently licensed

under Division 2 (commencing with Section 500) of the Business and Professions Code.

(b) A marriage, family and child counselor.

(c) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(d) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(e) A marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(f) An unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code.

(g) A state or county public health employee who treats a minor for venereal disease or any other condition.

(h) A coroner.

(i) A medical examiner, or any other person who performs autopsies.

SEC. 2. Section 11165.17 is added to the Penal Code, to read:

11165.17. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized religious denomination or organization.

SEC. 3. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal

control officer, or humane society officer who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of child abuse to a child protective agency.

(c) (1) Except as provided in paragraph (2) and subdivision (d), any clergy member who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her duties, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death.

(2) A clergy member who acquires knowledge or reasonable suspicion of child abuse during a penitential communication is not subject to paragraph (1). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(3) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse when he or she is acting in the capacity of a child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, humane society officer, or commercial film print processor.

(d) Any member of the clergy who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way may report the known or suspected instance of child abuse to a child protective agency.

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide

attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(f) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(g) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(h) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(i) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 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, which shall be reported only to the county welfare department. A county probation or welfare department also shall send a written report thereof within 36 hours of receiving the

information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 3.5. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in

any other way, may report the known or suspected instance of child abuse to a child protective agency.

(c) (1) Except as provided in paragraph (2) and subdivision (d), any clergy member who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her duties, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death.

(2) A clergy member who acquires knowledge or reasonable suspicion of child abuse during a penitential communication is not subject to paragraph (1). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(3) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse when he or she is acting in the capacity of a child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, humane society officer, or commercial film print processor.

(d) Any member of the clergy who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way may report the known or suspected instance of child abuse to a child protective agency.

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(f) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(g) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(h) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(i) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 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, which shall be reported only to the county welfare department. A county probation or welfare department also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 4. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, any person who enters into employment as a child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in Section 11165.15, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The statement shall include all of the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, employee of a child protective agency, or child visitation monitor who has knowledge of, or observes, a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately, or as soon as practically possible, by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

For purposes of this section, "child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, or youth organizations; administrators and employees of public or private organizations whose duties require direct contact and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; social workers, probation officers, or parole officers; employees of a school district police or security department; any person who is an administrator or a presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; marriage, family, and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family, and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family, and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; and paramedics.

"Child visitation monitor" means any person as defined in Section 11165.15.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in Section 11165.15, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

SEC. 5. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the

agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) or (c) of Section 11166, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code. If the department has information that has been received subsequent to January 1, 1981, concerning such a person, it also shall make available to the State Department of Social Services or to the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(5) Effective January 1, 1993, whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (3), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

All moneys received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is

hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and Section 290.2, and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and Section 290.2.

SEC. 5.1. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) The Department of Justice shall notify a district attorney who requests notification of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make information concerning substantiated reports of child abuse available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or to the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(c) The Department of Justice, upon request, shall make available to child protective agencies, other law enforcement agencies, and child death review teams any information submitted to the Department of Justice pursuant to subdivision (a) of Section 11169 concerning a suspected child abuser when that information is requested by the agency in connection with an active investigation of known or suspected child abuse by the requesting agency. Upon a court order, the Department of Justice also shall make information submitted to it pursuant to subdivision (a) of Section 11169 concerning a suspected child abuser available to persons who perform guardianship investigations pursuant to subdivision (a) of Section 1513 of the Probate Code. This information shall also be made available, upon request, to agencies located outside of California that are the functional equivalent of a California child protective agency, when that information is requested by the agency in connection with an active investigation of known or suspected child abuse by the requesting agency.

(d) When a report is made pursuant to subdivision (a) or (c) of Section 11166, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the

investigation and of any action the agency is taking with regard to the child or family.

(e) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, any information contained in the index, when the subject of that report is an applicant for licensure or is an adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(f) The Department of Justice, upon request, shall make available to child protective agencies responsible for placing dependent children, pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, or for wards of the juvenile courts pursuant to Article 14 (commencing with Section 600) of Chapter 2 of Part 1 of Division 2 of that code, any information contained in the index when the information is requested for purposes of ensuring that the placement of the child is in the best interests of the child.

(g) Persons or agencies, as specified in subdivision (b) or (c), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to subdivision (e), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(h) Effective January 1, 1993, whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to subdivision (e), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(i) All moneys received by the department pursuant to this section shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and Section 290.2, and for maintenance and

improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and Section 290.2.

(j) The Department of Justice shall act as a repository of all reports of suspected child abuse required to be submitted to the Child Abuse Central Index pursuant to this section that have been categorized as "substantiated and inconclusive" as defined in Section 11165.12. Submitting agencies are responsible for the accuracy, completeness, and retention of the reports pertinent to this section.

SEC. 5.2. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) or (c) of Section 11166, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code. If the department has information that has been received subsequent to January 1, 1981, concerning such a person, it also shall make available to the State Department of Social Services or to the county

licensing agency any other information maintained pursuant to subdivision (a).

(4) (A) The department shall make available to child death review teams and to local law enforcement, any information maintained in the child abuse index pursuant to subdivision (a). Case histories obtained pursuant to this paragraph may be shared with any other team authorized to obtain information pursuant to this paragraph.

(B) The department shall make available to child protective agencies, and probation departments responsible for placing children or assessing the possible placement of children pursuant to Article 7 (commencing with Section 305) and Article 10 (commencing with Section 360) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding the child, the party with whom the child may be placed, and any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement of the child is in the best interest of the child.

(C) Local child death review teams may share information contained with the other child death review teams.

(5) Except as provided in this section, persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), or child protective agencies or probation departments pursuant to paragraph (4), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement.

If information is obtained by a child protective agency or probation department for the emergency placement of a child pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, this information may be considered in determining placement of the child if criminal background information on the adults in the prospective placement's home is not available in a timely manner and the agency or department determines that further delay in placement may be detrimental to the child.

(6) Effective January 1, 1993, whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (3), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be

at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

All moneys received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Section 290.2, and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and Section 290.2.

SEC. 5.3. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) The Department of Justice shall notify a district attorney who requests notification of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make information concerning substantiated reports of child abuse available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or to the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(c) The Department of Justice, upon request, shall make available to child protective agencies, other law enforcement agencies, and child death review teams any information submitted to the Department of Justice pursuant to subdivision (a) of Section 11169 concerning a suspected child abuser when that information is requested by the agency in connection with an active investigation of known or suspected child abuse by the requesting agency. Upon a court order, the Department of Justice also shall make information submitted to it pursuant to subdivision (a) of Section 11169 concerning a suspected child abuser available to persons who perform guardianship investigations pursuant to subdivision (a) of Section 1513 of the Probate Code. This information shall also be made available, upon request, to agencies located outside of California that are the functional equivalent of a California child protective agency, when that information is requested by the agency in connection with an active investigation of known or suspected child abuse by the requesting agency.

(d) When a report is made pursuant to subdivision (a) or (c) of Section 11166, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(e) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, any information contained in the index, when the subject of that report is an applicant for licensure or is an adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(f) The Department of Justice, upon request, shall make available to child protective agencies responsible for placing dependent children, pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, or for wards of the juvenile courts pursuant to Article 14 (commencing with Section 600) of Chapter 2 of Part 1 of Division 2 of that code, any information contained in the index when the information is requested for purposes of ensuring that the placement of the child is in the best interests of the child.

(g) (1) The department shall make available to child death review teams and to local law enforcement, any information maintained in the child abuse index pursuant to subdivision (a). Case histories obtained pursuant to this subdivision may be shared with any other team authorized to obtain information pursuant to this subdivision.

(2) The department shall make available to child protective agencies, and probation departments responsible for placing children or assessing the possible placement of children pursuant to Article 7 (commencing with Section 305) and Article 10 (commencing with Section 360) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding the child, the party with whom the child may be placed, and any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement of the child is in the best interest of the child.

(3) Local child death review teams may share information contained with the other child death review teams.

(h) Except as provided in this section, persons or agencies, as specified in subdivision (b) or (c), if investigating a case of known or

suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to subdivision (e), or child protective agencies or probation departments pursuant to subdivision (g), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement.

(i) If information is obtained by a child protective agency or probation department for the emergency placement of a child pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, this information may be considered in determining placement of the child if criminal background information on the adults in the prospective placement's home is not available in a timely manner and the agency or department determines that further delay in placement may be detrimental to the child.

(j) Effective January 1, 1993, whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to subdivision (e), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(k) All moneys received by the department pursuant to this subdivision (j) shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Section 290.2, and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and Section 290.2.

(*l*) The Department of Justice shall act as a repository of all reports of suspected child abuse required to be submitted to the Child Abuse Central Index pursuant to this section that have been categorized as "substantiated and inconclusive" as defined in Section 11165.12. Submitting agencies are responsible for the accuracy, completeness, and retention of the reports pertinent to this section.

SEC. 6. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, health practitioner, firefighter, clergy member, animal control officer, humane society

officer, employee of a child protective agency, child visitation monitor, or commercial film and photographic print processor who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any child care custodian, health practitioner, firefighter, clergy member, animal control officer, humane society officer, employee of a child protective agency, or child visitation monitor who, pursuant to a request from a child protective agency, provides the requesting agency with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of child abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a child care custodian, health practitioner, firefighter, clergy member, animal control officer, humane society officer, employee of a child protective agency, child visitation monitor, or commercial film and photographic print processor may present a claim to the State Board of Control for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney

General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

(e) Any person who fails to report an instance of child abuse which he or she knows to exist, or reasonably should know to exist, as required by this article, is guilty of a misdemeanor, punishable by confinement in a county jail for a term not to exceed six months, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 7. Section 3.5 of this bill incorporates amendments to Section 11166 of the Penal Code proposed by both this bill and AB 295. 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 11166 of the Penal Code, and (3) this bill is enacted after AB 295, in which case Section 3 of this bill shall not become operative.

SEC. 8. (a) Section 5.1 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by both this bill and AB 2194. 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 11170 of the Penal Code, (3) SB 1812 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2194, in which case Sections 5, 5.2, and 5.3 of this bill shall not become operative.

(b) Section 5.2 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by both this bill and SB 1812. 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 11170 of the Penal Code, (3) AB 2194 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1812, in which case Sections 5, 5.1, and 5.3 of this bill shall not become operative.

(c) Section 5.3 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by this bill, AB 2194, and SB 1812. 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 11170 of the Penal Code, and (3) this bill is enacted after AB 2194 and SB 1812, in which case Sections 5, 5.1, and 5.2 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 1082

An act to amend Sections 300, 361.5, 366.21, and 366.26 of the Welfare and Institutions Code, relating to juveniles.

[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 300 of the Welfare and Institutions Code, is amended to read:

300. Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately

supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No minor shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the parent or guardian (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The minor shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No minor shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The minor has been sexually abused, or there is a substantial risk that the minor will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from sexual abuse when the parent or guardian knew or reasonably should have known that the minor was in danger of sexual abuse.

(e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A minor may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the probation officer has made an allegation of severe physical abuse pursuant to Section 332.

(f) The minor's parent or guardian caused the death of another minor through abuse or neglect.

(g) The minor has been left without any provision for support; the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or a relative or other adult custodian with whom the minor resides or has been left is unwilling or unable to provide care or support for the minor, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The minor has been freed for adoption from one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the minor was in danger of being subjected to an act or acts of cruelty.

(j) The minor's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the minor will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each minor, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor.

It is the intent of the Legislature in enacting this section to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect minors who are at risk of that harm. This

protection includes provision of a full array of social and health services to help the minor and family and to prevent reabuse of minors. That protection shall focus on the preservation of the family whenever possible. Nothing in this section is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section "guardian" means the legal guardian of the minor.

SEC. 1.5. Section 300 of the Welfare and Institutions Code is amended to read:

300. Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter,

or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No minor shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The minor shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No minor shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The minor has been sexually abused, or there is a substantial risk that the minor will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from sexual abuse when the parent or guardian knew or reasonably should have known that the minor was in danger of sexual abuse.

(e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity

that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A minor may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the probation officer has made an allegation of severe physical abuse pursuant to Section 332.

(f) The minor's parent or guardian caused the death of another minor through abuse or neglect.

(g) The minor has been left without any provision for support; the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or a relative or other adult custodian with whom the minor resides or has been left is unwilling or unable to provide care or support for the minor, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The minor has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the minor was in danger of being subjected to an act or acts of cruelty.

(j) The minor's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the minor will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each minor, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and

family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section "guardian" means the legal guardian of the minor.

SEC. 2. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b) or upon the establishment of an order of guardianship pursuant to Section 360, whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family within a maximum time period not to exceed 12 months. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the minor. Services may be extended up to an additional six months if it can be shown that the objectives of the service plan can be achieved within the extended time period. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a minor cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the minor clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section

7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the minor or a sibling of the minor had been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been returned to the custody of the parent or guardian from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361 due to additional physical or sexual abuse.

(4) That the parent or guardian of the minor has caused the death of another minor through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the minor has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the minor, a sibling or a half-sibling, by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the minor to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the minor, or a sibling or half-sibling of the minor, or between the minor or a sibling or half-sibling of the minor, and another person or animal with the actual or implied consent of the parent or guardian, or the penetration or manipulation of the minor's, sibling's or half-sibling's genital organs or rectum by any animate or inanimate object, for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a minor's body, or the body of a sibling or half-sibling of the minor, by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent of guardian; deliberate and torturous confinement of the minor, sibling, or half-sibling, in a closed space; or any other torturous act or omission which would be reasonably understood to cause serious emotional damage.

(7) That the minor was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state which if committed in this state would constitute such an offense. This paragraph only applies to the parent who committed the offense or act.

(8) That the minor was brought within the jurisdiction of the court under subdivision (g) of Section 300, that the parent or guardian of the minor willfully abandoned the minor, and the court finds that the abandonment itself constituted a serious danger to the minor. For purposes of this paragraph, a "serious danger" means that without the intervention of another person or agency, the minor would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the minor in serious danger.

(9) That (A) the court ordered a permanent plan of adoption, guardianship, or long-term foster care for any siblings or half-siblings of the minor because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a), or (B) the parental rights of a parent or guardian over any sibling or half-sibling of the minor had been permanently severed and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that minor from that parent or guardian.

(10) That the parent or guardian has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(11) That the parent or guardian of the minor has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior treatment for this problem during a three-year period immediately prior to the filing of the petition which brought that minor to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the minor within 12 months.

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (10), or (11) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the minor.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the minor or that failure to try reunification will be detrimental to the minor because the minor is closely and positively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the minor.

The failure of the parent to respond to previous services, the fact that the minor was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the minor to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the minor, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the minor if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 18-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between parent and minor through collect phone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the minor if the services are not detrimental to the minor.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If a court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of subdivision (b), or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26 it shall direct the agency supervising the minor 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.

(h) In determining whether reunification services will benefit the minor pursuant to paragraph (6) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the minor.

(2) The circumstances under which the abuse or harm was inflicted on the minor.

(3) The severity of the emotional trauma suffered by the minor.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the minor may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the minor desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (10) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the minor.

SEC. 2.5. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b) or upon the establishment of an order of guardianship pursuant to Section 360, whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family as follows:

(1) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months.

(2) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months.

However, court-ordered services may be extended up to a maximum time period not to exceed 18 months if it can be shown that the objectives of the service plan can be achieved within the extended time period. The court shall extend the time period 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 the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the minor. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a minor cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the minor clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the minor was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian, the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the minor or a sibling of the minor has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been

returned to the custody of the parent or guardian from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the minor has caused the death of another minor through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the minor has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the minor, sibling, or a half-sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the minor to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the minor, or a sibling or half-sibling of the minor, or between the minor or a sibling or half-sibling of the minor, and another person or animal with the actual or implied consent of the parent or guardian, or the penetration or manipulation of the minor's, sibling's, or half-sibling's genital organs or rectum by any animate or inanimate object, for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a minor's body, or the body of a sibling or half-sibling of the minor, by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the minor, sibling, or half-sibling, in a closed space; or any other torturous act or omission which would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the minor pursuant to paragraph (3), (5), or (6).

(8) That the minor was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state which if committed in this state would constitute such an offense. This paragraph only applies to the parent who committed the offense or act.

(9) That the minor was brought within the jurisdiction of the court under subdivision (g) of Section 300, that the parent or guardian of the minor willfully abandoned the minor, and the court finds that the abandonment itself constituted a serious danger to the minor. For

purposes of this paragraph, a "serious danger" means that without the intervention of another person or agency, the minor would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the minor in serious danger.

(10) That (A) the court ordered a permanent plan of adoption, guardianship, or long-term foster care for any siblings or half-siblings of the minor because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a), or (B) the parental rights of a parent or guardian over any sibling or half-sibling of the minor had been permanently severed and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that minor from that parent or guardian.

(11) That the parent or guardian has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(12) That the parent or guardian of the minor has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior treatment for this problem during a three-year period immediately prior to the filing of the petition which brought that minor to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (8), (9), (11), or (12) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the minor.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the minor or that failure to try reunification will be detrimental to the minor because the minor is

closely and positively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the minor.

The failure of the parent to respond to previous services, the fact that the minor was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the minor to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the minor, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the minor if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 18-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between parent and minor through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the minor if the services are not detrimental to the minor.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the

sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, or Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If a court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), or (12) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26 it shall direct the agency supervising the minor 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.

(h) In determining whether reunification services will benefit the minor pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the minor or the minor's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the minor or the minor's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the minor or the minor's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the minor may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the minor desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the minor.

(j) 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. 2.7. Section 361.5 is added to the Welfare and Institutions Code, to read:

361.5. (a) Except as provided in subdivision (b) or upon the establishment of an order of guardianship pursuant to Section 360, whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family as follows:

(1) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months.

(2) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months.

However, court-ordered services may be extended up to a maximum time period not to exceed 18 months if it can be shown that

the objectives of the service plan can be achieved within the extended time period. The court shall extend the time period 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 the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the minor. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a minor cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the minor clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the minor was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian, the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the minor or a sibling of the minor has been previously adjudicated a dependent pursuant to any subdivision of Section 300

as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been returned to the custody of the parent or guardian from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the minor has caused the death of another minor through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (c) of Section 300 because of the conduct of that parent or guardian.

(6) That the minor has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the minor, a sibling, or a half-sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the minor to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the minor, or a sibling or half-sibling of the minor or between the minor or a sibling or half-sibling of the minor and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the minor's, sibling's, or half-sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a minor's body or the body of a sibling or half-sibling of the minor by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the minor, sibling, or half-sibling in a closed space; or any other torturous act or omission which would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the minor pursuant to paragraph (3), (5), or (6).

(8) That the minor was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state which if committed in this state would constitute such an offense. This paragraph only applies to the parent who committed the offense or act.

(9) That the minor has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the minor willfully abandoned the minor, and the court finds that the abandonment itself constituted a serious danger to the child. For the purposes of this paragraph, "serious danger" means that without the intervention of another person or agency, the minor would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the minor in serious danger.

(10) That (A) the court ordered a permanent plan of adoption, guardianship, or long-term foster care for any siblings or half-siblings of the minor because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a), or (B) the parental rights of a parent or guardian over any sibling or half-sibling of the minor had been permanently severed and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that minor from that parent or guardian.

(11) That the parent or guardian has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(12) That the parent or guardian of the minor has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior treatment for this problem during a three-year period immediately prior to the filing of the petition which brought that minor to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the minor within 12 months.

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (9), (11), or (12) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the minor.

In addition, the court shall not order reunification in any situation described in subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the minor or that failure to try reunification will be detrimental to the minor because the minor is closely and positively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the minor.

The failure of the parent to respond to previous services, the fact that the minor was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the minor to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the minor, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the minor if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 18-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between the parent and minor through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the minor if the services are not detrimental to the minor.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If a court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), or (12) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26, it shall direct the agency supervising the minor 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, development, 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.

(h) In determining whether reunification services will benefit the minor pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission compromising the severe sexual abuse or the severe physical harm inflicted on the minor or the minor's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the minor or the minor's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the minor or the minor's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the minor may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the minor desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the minor.

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

SEC. 3. 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 minor 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 minor 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 minor, 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 minor 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. 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 minor 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. 3.5. 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 minor shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and 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 parent or guardian unless the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation

officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; 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; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision 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 minor, 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 minor 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. 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 the court finds, to the best of its knowledge and by a preponderance of the

evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer 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 that led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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 minor 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. 3.7. 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 minor 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 minor 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. 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 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if the parent has failed to contact and visit the minor, 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services. If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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 minor 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. 3.9. 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 minor shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and 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 parent or guardian unless the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and 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 availed himself or herself of services provided. Whether or not the minor is 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 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if the parent has failed to contact and visit the minor, 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services. If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer 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 that led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would

be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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 minor 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. 4. 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 minor 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 minor, 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 minor 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. 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 minor 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 minor 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 minor 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. 4.5. 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 and 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 parent or guardian unless the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian

would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision 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 minor, 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 minor 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. 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 the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or parent or guardian, the court shall specify the factual basis for its decision. 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 minor 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 minor 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. 4.7. 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 minor 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. 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 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if the parent has failed to contact and visit the minor, 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 minor 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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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 minor 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 minor 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. 4.9. 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 and 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 parent or guardian unless the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided. Whether or not the minor is 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 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a

substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if the parent has failed to contact and visit the minor, 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian,

the court shall specify the factual basis for its decision. 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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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 minor 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 minor 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. 5. Section 366.26 of the Welfare and Institutions Code, as amended by Section 6 of Chapter 540 of the Statutes of 1995, is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, including, but not limited to, the parent's or guardian's failure to cooperate, except for good cause, in the

provision of services specified in the child welfare services case plan, and then shall do one of the following:

(1) Permanently terminate the rights of the parent or parents and order that the minor be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted based upon the assessment made pursuant to subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. If the court so determines, the findings pursuant to subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the minor for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or 366.22 that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The minor is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal or financial responsibility for the minor, but who is willing and

capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor. This subparagraph does not apply to any minor who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one minor is under six years of age and the sibling is, or should be, permanently placed together.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there are no prospective adoptive homes available to the minor, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each minor shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the minor for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents pursuant to Section 8708 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (2), or (3) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there are no prospective adoptive homes available to the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is aged seven years or more, and evidence presented to the court in the assessment made pursuant to subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22 indicates that the presence and severity of one or more of these factors renders the minor difficult to place.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the minor and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian,

the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the minor should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a minor who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and

subdivision (b) of Section 366.22 shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a minor who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of such a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require this protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all termination proceedings, the court shall consider the wishes of the minor and shall act in the best interests of the minor.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that minor over all other applications for adoptive placement if the agency making the placement determines that the minor has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the minor's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the minor.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at anytime unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) 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. 5.5. Section 366.26 of the Welfare and Institutions Code, as added by Section 6 of Chapter 540 of the Statutes of 1995, is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are

adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, including, but not limited to, the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan, and then shall do one of the following:

(1) Permanently terminate the rights of the parent or parents and order that the minor be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor within a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted based upon the assessment made pursuant to subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. If the court so determines, the findings pursuant to subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the minor for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or 366.22 that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of

parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The minor is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal or financial responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor. This subparagraph does not apply to any minor, who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one minor is under six years of age and the sibling is, or should be, permanently placed together.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there are no prospective adoptive homes available to the minor, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each minor shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the minor for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there are no prospective adoptive homes available to the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or

mental handicap, or the minor is aged seven years or more, and evidence presented to the court in the assessment made pursuant to subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22 indicates that the presence and severity of one or more of these factors renders the minor difficult to place.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the minor and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the minor should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the

appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a minor who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption pursuant to Section 8714 of the Family Code, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a minor who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of such a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require this protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in any proportions the court deems just. However, if the court finds that any of the real

parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all termination proceedings, the court shall consider the wishes of the minor and shall act in the best interests of the minor.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that minor over all other applications for

adoptive placement if the agency making the placement determines that the minor has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the minor's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the minor.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) 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. 6. Section 366.26 of the Welfare and Institutions Code, as added by Section 7 of Chapter 540 of the Statutes of 1995, is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, including, but not limited to, the parent's or guardian's failure to sign the child welfare services case plan or failure to cooperate in the provision of services specified in the child welfare services case plan, and then shall do one of the following:

(1) Permanently terminate the rights of the parent or parents and order that the minor be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, pursuant to Section 366.21 or 366.22, that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The minor is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the minor a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal or financial responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor. This subparagraph does not apply to any minor who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one minor is under six years of age and the sibling is, or should be, permanently placed together.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be

made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each minor shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the minor for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents pursuant to Section 8708 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (2), or (3) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the minor and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the minor should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services

ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a minor who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a minor who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of such a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require this protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all termination proceedings, the court shall consider the wishes of the minor and shall act in the best interests of the minor.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State

Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that minor over all other applications for adoptive placement if the agency making the placement determines that the minor has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the minor's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the minor.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at anytime unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

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

SEC. 6.5. Section 366.26 of the Welfare and Institutions Code, as added by Section 7 of Chapter 540 of the Statutes of 1995, is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, including, but not limited to, the parent's or guardian's failure to sign the child welfare services case plan or failure to cooperate in the provision of services specified in the child welfare services case plan, and then shall do one of the following:

(1) Permanently terminate the rights of the parent or parents and order that the minor be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be

made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) or paragraph 1 of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, pursuant to Section 366.21 or 366.22, that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The minor is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the minor a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal or financial responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor. This subparagraph does not apply to any minor who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one minor is under six years of age and the sibling is, or should be, permanently placed together.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable

efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each minor shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the minor for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the minor and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the minor should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court

shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a minor who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a minor who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of such a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require this protection, the court shall

appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all termination proceedings, the court shall consider the wishes of the minor and shall act in the best interests of the minor.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the minor free from the custody and control of both parents, or one parent if the other

does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that minor over all other applications for adoptive placement if the agency making the placement determines that the minor has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the minor's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the minor.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail

by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

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

SEC. 7. Section 1.5 of this bill incorporates amendments to Section 300 of the Welfare and Institutions Code proposed by both this bill and SB 1516. 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 300 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1516, in which case Section 1 of this bill shall not become operative.

SEC. 8. Sections 2.5 and 2.7 of this bill incorporate amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and AB 1524. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 361.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1524, in which case Section 2 of this bill shall not become operative.

SEC. 9. (a) Sections 3.5 and 4.5 of this bill incorporate amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and SB 1516. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, (3) AB 1524 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1516, in which case Sections 3, 3.7, 3.9, 4, 4.7, and 4.9 of this bill shall not become operative.

(b) Sections 3.7 and 4.7 of this bill incorporate amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 1524. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 366.21 of the Welfare and Institutions

Code, (3) SB 1516 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1524 in which case Sections 3, 3.5, 3.9, 4, 4.5, and 4.9 of this bill shall not become operative.

(c) Sections 3.9 and 4.9 of this bill incorporate amendments to Section 366.21 of the Welfare and Institutions Code proposed by this bill, SB 1516, and AB 1524. They 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 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1516 and AB 1524, in which case Sections 3, 3.5, 3.7, 4, 4.5, and 4.7 of this bill shall not become operative.

SEC. 10. Sections 5.5 and 6.5 of this bill incorporate amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 1524. 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 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1524, in which case Sections 5 and 6 of this bill shall not become operative.

CHAPTER 1083

An act to amend Sections 366.21, 366.26, 16100, 16122, and 16501 of, and to amend, repeal, and add Section 361.5 of, the Welfare and Institutions Code, relating to children.

[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 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b) or upon the establishment of an order of guardianship pursuant to Section 360, whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family as follows:

(1) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months.

(2) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months.

However, court-ordered services may be extended up to a maximum time period not to exceed 18 months if it can be shown that the objectives of the service plan can be achieved within the extended time period. The court shall extend the time period 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 the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the minor was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian, the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the minor had been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been returned to the custody of the parent or parents or guardian or guardians from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the minor has been convicted of causing the death of another child through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the minor has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child, or between the child and another person or animal with the actual or implied consent of, and for the financial gain or other advantage of, the parent or guardian; or the penetration or manipulation of the child's genital organs or rectum by any animate or inanimate object, for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of, and for the financial gain or other advantage of, the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child in a closed space; or any other torturous act or omission which would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the minor pursuant to paragraph (3), (5), or (6).

(8) That the minor was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside this state which if committed in this state would constitute such an offense. This paragraph only applies to the parent who perpetrated the offense or act.

(9) That the minor has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the minor willfully abandoned the minor, and the court finds that the abandonment itself constituted a serious danger to the child. For the purposes of this paragraph, "serious danger" means that, without intervention by another person or agency, the minor would have sustained severe or permanent disability, injury, illness, or death.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

When paragraph (3), (4), (5), or (9) of subdivision (b) is applicable, the court shall not order reunification unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

The court shall not order reunification for a parent who perpetrated an offense or act specified in paragraph (7) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the minor.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision.

However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 18-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between parent and child through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, or Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If a court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), or (9) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit

the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment 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.

(h) In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

(j) 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 361.5 is added to the Welfare and Institutions Code, to read:

361.5. (a) Except as provided in subdivision (b) or upon the establishment of an order of guardianship pursuant to Section 360, whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family as follows:

(1) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was age three years or older, court-ordered services shall not exceed a period of 12 months.

(2) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months.

However, court-ordered services may be extended up to a maximum time period not to exceed 18 months if it can be shown that the objectives of the service plan can be achieved within the extended time period. The court shall extend the time period 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 the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly

desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the minor was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian, the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the minor has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been returned to the custody of the parent or parents or guardian or guardians from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the minor has been convicted of causing the death of another child through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (c) of Section 300 because of the conduct of that parent or guardian.

(6) That the minor has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse or stimulation involving genital-genital, oral-genital, anal-genital, or

oral-anal contact, whether between the parent or guardian and the child, or between the child and another person or animal with the actual or implied consent of, and for the financial gain or other advantage of, the parent or guardian; or the penetration or manipulation of the child's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of, and of the financial gain or other advantage of, the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child in a closed space; or any other torturous act or omission which would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the minor pursuant to paragraph (3), (5), or (6).

(8) That the minor was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside this state which if committed in this state would constitute such an offense. This paragraph only applies to the parent who perpetrated the offense or act.

(9) That the minor has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the minor willfully abandoned the minor, and the court finds that the abandonment itself constituted a serious danger to the child. For the purposes of this paragraph, "serious danger" means that, without intervention by another person or agency, the minor would have sustained severe or permanent disability, injury, illness, or death.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

When paragraph (3), (4), (5), or (9) of subdivision (b) is applicable, the court shall not order reunification unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The probation officer

shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

The court shall not order reunification for a parent who perpetrated an offense or act specified in paragraph (8) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the minor.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 18-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between parent and child through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If a court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), or (9) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, development, 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.

(h) In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission compromising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

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

SEC. 2.5. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b) or upon the establishment of an order of guardianship pursuant to Section 360, whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family as follows:

(1) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months.

(2) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months.

However, court-ordered services may be extended up to a maximum time period not to exceed 18 months if it can be shown that the objectives of the service plan can be achieved within the extended time period. The court shall extend the time period 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 the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the minor. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a minor cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the minor clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the minor was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian, the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the minor or a sibling of the minor had been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been returned to the custody of the parent or guardian from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the minor has caused the death of another minor through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the minor has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the minor, a sibling, or a half-sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the minor to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the minor, or a sibling or half-sibling of the minor, or between the minor or a sibling or half-sibling of the minor, and another person or animal with the actual or implied consent of the parent or guardian, or the penetration or manipulation of the minor's, sibling's, or half-sibling's genital organs or rectum by any animate or inanimate object, for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a minor's body, or the body of a sibling or half-sibling of the minor, by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the minor, sibling, or half-sibling, in a closed space; or any other torturous act or omission which would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the minor pursuant to paragraph (3), (5), or (6).

(8) That the minor was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state which if committed in this state

would constitute such an offense. This paragraph only applies to the parent who committed the offense or act.

(9) That the minor was brought within the jurisdiction of the court under subdivision (g) of Section 300, that the parent or guardian of the minor willfully abandoned the minor, and the court finds that the abandonment itself constituted a serious danger to the minor. For purposes of this paragraph, a "serious danger" means that without the intervention of another person or agency, the minor would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the minor in serious danger.

(10) That (A) the court ordered a permanent plan of adoption, guardianship, or long-term foster care for any siblings or half-siblings of the minor because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a), or (B) the parental rights of a parent or guardian over any sibling or half-sibling of the minor had been permanently severed and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that minor from that parent or guardian.

(11) That the parent or guardian has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(12) That the parent or guardian of the minor has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior treatment for this problem during a three-year period immediately prior to the filing of the petition which brought that minor to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (8), (9), (11), or (12) of

subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the minor.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the minor or that failure to try reunification will be detrimental to the minor because the minor is closely and positively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the minor.

The failure of the parent to respond to previous services, the fact that the minor was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the minor to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the minor, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the minor if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 18-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between parent and minor through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the minor if the services are not detrimental to the minor.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, or Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If a court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), or (12) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26 it shall direct the agency supervising the minor 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.

(h) In determining whether reunification services will benefit the minor pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the minor or the minor's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the minor or the minor's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the minor or the minor's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the minor may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the minor desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the minor.

(j) 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. 2.7. Section 361.5 is added to the Welfare and Institutions Code, to read:

361.5. (a) Except as provided in subdivision (b) or upon the establishment of an order of guardianship pursuant to Section 360, whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family as follows:

(1) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of

age or older, court-ordered services shall not exceed a period of 12 months.

(2) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months.

However, court-ordered services may be extended up to a maximum time period not to exceed 18 months if it can be shown that the objectives of the service plan can be achieved within the extended time period. The court shall extend the time period 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 the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the minor. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a minor cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the minor clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the minor was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian, the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to

locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the minor or a sibling of the minor has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been returned to the custody of the parent or guardian from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the minor has caused the death of another minor through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (c) of Section 300 because of the conduct of that parent or guardian.

(6) That the minor has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the minor, a sibling, or a half-sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the minor to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the minor or a sibling or half-sibling of the minor, or between the minor or a sibling or half-sibling of the minor and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the minor's, sibling's, or half-sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a minor's body or the body of a sibling or half-sibling of the minor by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the minor, sibling, or half-sibling in a closed space; or any other torturous act or omission which would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the minor pursuant to paragraph (3), (5), or (6).

(8) That the minor was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state which if committed in this state would constitute such an offense. This paragraph only applies to the parent who committed the offense or act.

(9) That the minor has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the minor willfully abandoned the minor, and the court finds that the abandonment itself constituted a serious danger to the child. For the purposes of this paragraph, "serious danger" means that without the intervention of another person or agency, the minor would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the minor in serious danger.

(10) That (A) the court ordered a permanent plan of adoption, guardianship, or long-term foster care for any siblings or half-siblings of the minor because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a), or (B) the parental rights of a parent or guardian over any sibling or half-sibling of the minor had been permanently severed and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that minor from that parent or guardian.

(11) That the parent or guardian has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(12) That the parent or guardian of the minor has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior treatment for this problem during a three-year period immediately prior to the filing of the petition which brought that minor to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health

professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the minor within 12 months.

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (8), (9), (11), or (12) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the minor.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the minor or that failure to try reunification will be detrimental to the minor because the minor is closely and positively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the minor.

The failure of the parent to respond to previous services, the fact that the minor was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the minor to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the minor, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the minor if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 18-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between the parent and minor through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the minor if the services are not detrimental to the minor.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If a court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), or (12) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26, it shall direct the agency supervising the minor 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, development, 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.

(h) In determining whether reunification services will benefit the minor pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission compromising the severe sexual abuse or the severe physical harm inflicted on the minor or the minor's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the minor or the minor's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the minor or the minor's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the minor may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the minor desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the minor.

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

SEC. 3. 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. 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 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, 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. The court shall order that those services be initiated, continued, or terminated.

(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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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.

(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. 3.5. 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 minor 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 minor 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. 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 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her

parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 minor, 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services. If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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 minor 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. 3.7. 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 and 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 parent or guardian unless the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and 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. Whether or not the minor is 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 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if the parent has failed to contact and visit the minor, 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services. If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the court

finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer 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 that led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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.

(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. 3.9. 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 minor shall be placed on the appearance calendar. The court shall advise all persons present at the

hearing of the date of the future hearing and 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 parent or guardian unless the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and 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. Whether or not the minor is 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 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if the parent has failed to contact and visit the minor, 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services. If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer 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 that led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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 minor 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. 4. 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. 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 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, 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. The court shall order that those services be initiated , continued, or terminated.

(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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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.

(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. 4.5. 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 minor 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. 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 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if the parent has failed to contact and visit the minor, 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the minor 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. The

court shall order that those services be initiated, continued, or terminated.

(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 minor 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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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 minor 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 minor 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. 4.7. 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 and 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 parent or guardian unless the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and 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 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 appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that the return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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.

(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. 4.9. 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 and 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 parent or guardian unless the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she 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 appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if the parent has failed to contact and visit the minor, 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the court finds, to the best of its knowledge and by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court

shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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 the time period in which court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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 minor 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 after 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 minor 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. 5. Section 366.26 of the Welfare and Institutions Code, as amended by Section 6 of Chapter 540 of the Statutes of 1995, is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, including, but not limited to, the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan, and then shall do one of the following:

(1) Permanently sever the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor within a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted based upon the assessment made pursuant to subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. If the court so determines, the findings pursuant to subdivision (b) or paragraph 1 of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or 366.22 that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not

prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there are no prospective adoptive homes available to the minor, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there are no prospective adoptive homes available to the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is aged seven years or more, and evidence presented to the court in the assessment made pursuant to subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22 indicates that the presence and severity of one or more of these factors renders the minor difficult to place.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable

guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a minor who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption pursuant to Section 8714 of the Family Code, the juvenile court shall order that an

adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a minor who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of such a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require this protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) 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. 5.5. Section 366.26 of the Welfare and Institutions Code, as amended by Section 6 of Chapter 540 of the Statutes of 1995, is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings;

Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, including, but not limited to, the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan, and then shall do one of the following:

(1) Permanently terminate the rights of the parent or parents and order that the minor be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor within a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted based upon the assessment made pursuant to subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. If the court so determines, the findings pursuant to subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the minor for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or 366.22 that a minor cannot or should not be returned to his or her parent or

guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The minor is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal or financial responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor. This subparagraph does not apply to any minor, who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one minor is under six years of age and the siblings are, or should be, permanently placed together.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there are no prospective adoptive homes available to the minor, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each minor shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the minor for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there are no prospective adoptive homes available to the minor because of the minor's membership in

a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is aged seven years or more, and evidence presented to the court in the assessment made pursuant to subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22 indicates that the presence and severity of one or more of these factors renders the minor difficult to place.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the minor and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the minor should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court.

If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a minor who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption pursuant to Section 8714 of the Family Code, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a minor who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of such a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require this protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in any proportions the court deems just. However, if the court finds that any of the real

parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all termination proceedings, the court shall consider the wishes of the minor and shall act in the best interests of the minor.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that minor over all other applications for

adoptive placement if the agency making the placement determines that the minor has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the minor's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the minor.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) 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. 6. Section 366.26 of the Welfare and Institutions Code, as added by Section 7 of Chapter 540 of the Statutes of 1995, is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, including, but not limited to, the parent's or guardian's failure to sign the child welfare services case plan or failure to cooperate in the provision of services specified in the child welfare services case plan, and then shall do one of the following:

(1) Permanently sever the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) or paragraph 1 of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, pursuant to Section 366.21 or 366.22, that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption

agencies regarding the availability of the child for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency

shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a minor who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a minor who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of such a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require this protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified

in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

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

SEC. 6.5. Section 366.26 of the Welfare and Institutions Code, as added by Section 7 of Chapter 540 of the Statutes of 1995, is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, including, but not limited to, the parent's or guardian's failure to sign the child welfare services case plan or failure to cooperate in the provision of services specified in the child welfare services case plan, and then shall do one of the following:

(1) Permanently terminate the rights of the parent or parents and order that the minor be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) or paragraph 1 of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, pursuant to Section 366.21 or 366.22, that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The minor is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the minor a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal or financial responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor. This subparagraph does not apply to any minor who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one minor is under six years of age and the sibling is, or should be, permanently placed together.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive

parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each minor shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the minor for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the minor and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the minor should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family

agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a minor who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a minor who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of such a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require this protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all termination proceedings, the court shall consider the wishes of the minor and shall act in the best interests of the minor.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State

Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that minor over all other applications for adoptive placement if the agency making the placement determines that the minor has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the minor's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the minor.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

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

SEC. 7. Section 16100 of the Welfare and Institutions Code is amended to read:

16100. (a) Any county may apply for, and the department may issue pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code to any county agency designated by the county making the application, a license to perform the home-finding and placement functions, to investigate, examine, and make reports upon petitions for adoption filed in the superior court, to act as a placement agency in the placement of children for adoption, to accept relinquishments for adoption, and to perform such other functions in connection with adoption as the department deems necessary, or to do any of them. Nothing in this section shall be construed to authorize a licensed county adoption agency, as provided in subdivision (d), to provide intercountry adoption services.

(b) Notwithstanding any other provision of law, a licensed county adoption agency may purchase services described in subdivision (a) from any licensed private adoption agency which that private adoption agency is licensed to provide pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code. These services shall be purchased to facilitate adoptive placement of a specified category of children for whom the licensed county adoption agency has determined it cannot provide adequate services.

(c) In order to extend the services of county adoption agencies to the maximum number of counties practicable within the limits of funds appropriated therefor, the department may license a county adoption agency to operate in such other counties in the general area of the agency as it deems conducive to the effective and efficient administration of the adoption program.

(d) A license issued to a county agency pursuant to this section constitutes the holder thereof a "county adoption agency" and the holder shall be deemed to be an "organization" within the meaning

of this code and of Division 13 (commencing with Section 8500) of the Family Code.

SEC. 8. Section 16122 of the Welfare and Institutions Code is amended to read:

16122. (a) It is the intent of the Legislature in enacting this chapter to provide children who would otherwise remain in long-term foster care with permanent adoptive homes. It is also the intent of this Legislature to encourage private adoption agencies to continue placing these children, and in so doing, to achieve a substantial savings to the state in foster care costs.

(b) From any funds appropriated for this purpose, the state shall compensate private adoption agencies licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code for costs of placing for adoption children eligible for Adoption Assistance Program benefits pursuant to Section 16120.

These agencies shall be compensated for otherwise unreimbursed costs for the placement of these children in an amount not to exceed a total of three thousand five hundred dollars ($3,500) per child adopted. Half of the compensation shall be paid at the time the adoptive placement agreement is signed. The remainder shall be paid at the time the adoption petition is granted by the court. Requests for compensation shall conform to claims procedures established by the department. This section shall not be construed to authorize reimbursement to private agencies for intercountry adoption services.

SEC. 9. Section 16501 of the Welfare and Institutions Code is amended to read:

16501. (a) As used in this chapter, "child welfare services" means public social services which are directed toward the accomplishment of any or all the following purposes: protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; restoring to their families children who have been removed, by the provision of services to the child and the families; identifying children to be placed in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.

"Child welfare services" also means services provided on behalf of children alleged to be the victims of child abuse, neglect, or exploitation. The child welfare services provided on behalf of each child represent a continuum of services, including emergency

response services, family preservation services, family maintenance services, family reunification services, and permanent placement services. The individual child's case plan is the guiding principle in the provision of these services. The case plan shall be developed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the jurisdictional hearing pursuant to Section 356, whichever comes first.

(1) Child welfare services may include, but are not limited to, a range of service-funded activities, including case management, counseling, emergency shelter care, emergency in-home caretakers, temporary in-home caretakers, respite care, therapeutic day services, teaching and demonstrating homemakers, parenting training, substance abuse testing, and transportation. These service-funded activities shall be available to children and their families in all phases of the child welfare program in accordance with the child's case plan and departmental regulations. Funding for services is limited to the amount appropriated in the annual Budget Act and other available county funds.

(2) Service-funded activities to be provided may be determined by each county, based upon individual child and family needs as reflected in the service plan.

(3) As used in this chapter, "emergency shelter care" means emergency shelter provided to children who have been removed pursuant to Section 300 from their parent or parents or their guardian or guardians. The department may establish, by regulation, the time periods for which emergency shelter care shall be funded. For the purposes of this paragraph, "emergency shelter care" may include "transitional shelter care facilities" as defined in paragraph (11) of subdivision (a) of Section 1502 of the Health and Safety Code.

(b) As used in this chapter, "respite care" means temporary care for periods not to exceed 72 hours. This care may be provided to the child's parents or guardians. This care shall not be limited by regulation to care over 24 hours. These services shall not be provided for the purpose of routine, ongoing child care.

(c) The county shall provide child welfare services as needed pursuant to an approved service plan and in accordance with regulations promulgated, in consultation with the counties, by the department. Counties may contract for service-funded activities as defined in paragraph (1) of subdivision (a). Each county shall use available private child welfare resources prior to developing new county-operated resources when the private child welfare resources are of at least equal quality and lesser or equal cost as compared with county-operated resources. Counties shall not contract for needs assessment, client eligibility determination, or any other activity as specified by regulations of the State Department of Social Services, except as specifically authorized in Section 16100.

(d) Nothing in this chapter shall be construed to affect duties which are delegated to probation officers pursuant to Sections 601 and 654.

(e) Any county may utilize volunteer individuals to supplement professional child welfare services by providing ancillary support services in accordance with regulations adopted by the State Department of Social Services.

(f) As used in this chapter, emergency response services consist of a response system providing in-person response, 24 hours a day, seven days a week, to reports of abuse, neglect, or exploitation, as required by Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code for the purpose of investigation pursuant to Section 11166 of the Penal Code and to determine the necessity for providing initial intake services and crisis intervention to maintain the child safely in his or her own home or to protect the safety of the child. County welfare departments shall respond to any report of imminent danger to a child immediately and all other reports within 10 calendar days. An in-person response is not required when the county welfare department, based upon an evaluation of risk, determines that an in-person response is not appropriate. This evaluation includes collateral, contacts, a review of previous referrals, and other relevant information, as indicated.

(g) As used in this chapter, family maintenance services are activities designed to provide in-home protective services to prevent or remedy neglect, abuse, or exploitation, for the purposes of preventing separation of children from their families.

(h) As used in this chapter, family reunification services are activities designed to provide time-limited foster care services to prevent or remedy neglect, abuse, or exploitation, when the child cannot safely remain at home, and needs temporary foster care, while services are provided to reunite the family.

(i) As used in this chapter, permanent placement services are activities designed to provide an alternate permanent family structure for children who because of abuse, neglect, or exploitation cannot safely remain at home and who are unlikely to ever return home. These services shall be provided on behalf of children for whom there has been a judicial determination of a permanent plan for adoption, legal guardianship, or long-term foster care.

(j) As used in this chapter, family preservation services include those services specified in Section 16500.5 to avoid or limit out-of-home placement of children, and may include those services specified in that section to place children in the least restrictive environment possible.

(k) (1) (A) In any county electing to implement this subdivision, all county welfare department employees who have frequent and routine contact with children shall, by February 1, 1997, and all welfare department employees who are expected to have frequent and routine contact with children and who are hired on or after

January 1, 1996, and all such employees whose duties change after January 1, 1996, to include frequent and routine contact with children, shall, if the employees provide services to children who are alleged victims of abuse, neglect, or exploitation, sign a declaration under penalty of perjury regarding any prior criminal conviction, and shall provide a set of fingerprints to the county welfare director.

(B) The county welfare director shall secure from the Department of Justice a criminal record to determine whether the employee has ever been convicted of a crime other than a minor traffic violation. The Department of Justice shall deliver the criminal record to the county welfare director.

(C) If it is found that the employee has been convicted of a crime, other than a minor traffic violation, the county welfare director shall determine whether there is substantial and convincing evidence to support a reasonable belief that the employee is of good character so as to justify frequent and routine contact with children.

(D) No exemption shall be granted pursuant to subparagraph (C) if the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 220, 243.4, 264.1, 273d, 288, or 289 of the Penal Code, or in paragraph (1) of Section 273a of, or subdivision (a) or (b) of Section 368 of, the Penal Code, or has been convicted of an offense specified in subdivision (c) of Section 667.5 of the Penal Code. The county welfare director shall suspend such a person from any duties involving frequent and routine contact with children.

(E) Notwithstanding subparagraph (D), the county welfare director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual specified in paragraph (1) or (7) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's or prospective employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code. In that case, the county welfare director may give the employee or prospective employee an opportunity to explain the conviction and shall consider that explanation in the evaluation of the criminal conviction record.

(F) If no criminal record information has been recorded, the county welfare director shall cause a statement of that fact to be included in that person's personnel file.

(2) For purposes of this subdivision, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the county welfare director 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, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this subdivision, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

SEC. 10. Sections 2.5 and 2.7 of this bill incorporate amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and AB 2679. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 361.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2679, in which case Sections 1 and 2 of this bill shall not become operative.

SEC. 11. (a) Sections 3.5 and 4.5 of this bill incorporate amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 2679. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, (3) SB 1516 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2679, in which case Sections 3, 3.7, 3.9, 4, 4.7, and 4.9 of this bill shall not become operative.

(b) Sections 3.7 and 4.7 of this bill incorporate amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and SB 1516. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, (3) AB 2679 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1516, in which case Sections 3, 3.5, 3.9, 4, 4.5, and 4.9 of this bill shall not become operative.

(c) Sections 3.9 and 4.9 of this bill incorporate amendments to Section 366.21 of the Welfare and Institutions Code proposed by this bill, AB 2679, and SB 1516. They 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 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2679 and SB 1516, in which case Sections 3, 3.5, 3.7, 4, 4.5, and 4.7 of this bill shall not become operative.

SEC. 12. Sections 5.5 and 6.5 of this bill incorporate amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 2679. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 366.26 of the Welfare and

Institutions Code, and (3) this bill is enacted after AB 2679, in which case Sections 5 and 6 of this bill shall not become operative.

CHAPTER 1084

An act to amend Sections 300, 317, 361, 361.2, 366.21, 366.22, and 16500 of, and to add Section 300.2 to, the Welfare and Institutions Code, relating to dependent children.

[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 300 of the Welfare and Institutions Code is amended to read:

300. Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No minor shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to

the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The minor shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No minor shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The minor has been sexually abused, or there is a substantial risk that the minor will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from sexual abuse when the parent or guardian knew or reasonably should have known that the minor was in danger of sexual abuse.

(e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A minor may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of

severe physical abuse unless the probation officer has made an allegation of severe physical abuse pursuant to Section 332.

(f) The minor's parent or guardian has been convicted of causing the death of another child through abuse or neglect.

(g) The minor has been left without any provision for support; the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The minor has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the minor was in danger of being subjected to an act or acts of cruelty.

(j) The minor's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the minor will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section "guardian" means the legal guardian of the child.

SEC. 1.5. Section 300 of the Welfare and Institutions Code is amended to read:

300. Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No minor shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The minor shall continue to

be a dependent child pursuant to this subdivision only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No minor shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The minor has been sexually abused, or there is a substantial risk that the minor will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from sexual abuse when the parent or guardian knew or reasonably should have known that the minor was in danger of sexual abuse.

(e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A minor may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the probation officer has made an allegation of severe physical abuse pursuant to Section 332.

(f) The minor's parent or guardian caused the death of another minor through abuse or neglect.

(g) The minor has been left without any provision for support; the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or a relative or other adult custodian with whom the minor resides or has been left is unwilling or unable to provide care or support for the minor, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The minor has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the minor was in danger of being subjected to an act or acts of cruelty.

(j) The minor's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the minor will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each minor, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section "guardian" means the legal guardian of the minor.

SEC. 2. Section 300.2 is added to the Welfare and Institutions Code, to read:

300.2. Notwithstanding any other provision of law, the purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional

well-being may include provision of a full array of social and health services to help the child and family and to prevent reabuse of children. The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child. The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment.

SEC. 3. Section 317 of the Welfare and Institutions Code is amended to read:

317. (a) When it appears to the court that a parent or guardian of the minor desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section.

(b) When it appears to the court that a parent or guardian of the minor is presently financially unable to afford and cannot for that reason employ counsel, and the minor has been placed in out-of-home care, or the petitioning agency is recommending that the minor be placed in out-of-home care, the court shall appoint counsel, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel as provided in this section.

(c) In any case in which it appears to the court that the minor would benefit from the appointment of counsel the court shall appoint counsel for the minor as provided in this section. A primary responsibility of any counsel appointed to represent a minor pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the minor. Counsel for the minor may be a county counsel, district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the minor's. The fact that the district attorney represents the minor in a proceeding pursuant to Section 300 as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts as the proceeding pursuant to Section 300 is not in and of itself a conflict of interest. The court shall determine if representation of both the petitioning agency and the minor constitutes a conflict of interest. If the court finds there is a conflict of interest, separate counsel shall be appointed for the minor. The court may fix the compensation to be paid by the county for the services of appointed counsel, if counsel is not a county counsel, district attorney, public defender or other public attorney.

(d) The counsel appointed by the court shall represent the parent, guardian, or minor at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent or minor unless relieved by the court upon the

substitution of other counsel or for cause. The representation shall include representing the parent or the minor in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship.

(e) The counsel for the minor shall be charged in general with the representation of the minor's interests. To that end, the counsel shall make or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. He or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the minor's welfare, and participate further in the proceedings to the degree necessary to adequately represent the minor. In any case in which the minor is four years of age or older, counsel shall interview the minor to determine the minor's wishes and to assess the minor's well-being, and shall advise the court of the minor's wishes. Counsel for the minor shall not advocate for the return of the minor if, to the best of his or her knowledge, that return conflicts with the protection and safety of the minor. In addition counsel shall investigate the interests of the minor beyond the scope of the juvenile proceeding and report to the court other interests of the minor that may need to be protected by the institution of other administrative or judicial proceedings. The court shall take whatever appropriate action is necessary to fully protect the interests of the minor.

(f) Notwithstanding any other law, counsel shall be given access to all records relevant to the case which are maintained by state or local public agencies. Counsel shall be given access to records maintained by hospitals or by other medical or nonmedical practitioners or by child care custodians, in the manner prescribed by Section 1158 of the Evidence Code.

(g) In a county of the third class, if counsel is to be provided to a minor at county expense other than by counsel for the agency, the court shall first utilize the services of the public defender prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the public defender after making a finding of good cause and stating the reasons therefor on the record.

(h) In a county of the third class, if counsel is to be appointed for a parent or guardian at county expense, the court shall first utilize the services of the alternate public defender, prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the alternate public defender in any case in which the public defender has a conflict of

interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the alternate public defender after making a finding of good cause and stating the reasons therefor on the record.

SEC. 4. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child.

(b) No dependent child shall be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor was returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.25 or 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(c) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (b), whether it was reasonable under the circumstances not to make any such efforts. The court shall state the facts on which the decision to remove the minor is based.

(d) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 4.5. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child.

(b) No dependent child shall be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor was returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending

parent or guardian to retain custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.25 or 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(c) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (b), whether it was reasonable under the circumstances not to make any of those efforts. The court shall state the facts on which the decision to remove the minor is based.

(d) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 5. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a minor pursuant to Section 361, the court shall first determine whether there is a parent of the minor, with whom the minor was not residing at the time that

the events or conditions arose that brought the minor within the provisions of Section 300, who desires to assume custody of the minor. If such a parent requests custody, the court shall place the minor with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the minor.

(b) If the court places the minor with such a parent it may do either of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the minor. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In such a case the court may order that reunification services be provided to the parent or guardian from whom the minor is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the minor.

(c) The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).

(d) Part 6 (commencing with Section 7950) of Division 12 of the Family Code shall apply to the placement of a minor pursuant to paragraphs (1) and (2) of subdivision (e).

(e) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(6) A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility as defined in Section 1530.8 of the

Health and Safety Code, only under any of the following circumstances:

(A) When a case plan indicates that placement is for purposes of providing specialized treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, and the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1. The specialized treatment period shall not exceed 120 days, unless additional time is needed pursuant to the case plan as documented by the caseworker and approved by the caseworker's supervisor.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(f) (1) If the minor is taken from the physical custody of the minor's parent or guardian and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parent or guardian in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parent's or guardian's county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parent's or guardian's community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parent or guardian. In determining whether the minor should be moved, the probation officer shall take into consideration the potential harmful effects of disrupting the placement of the minor and the parent's or guardian's reason for the move.

(4) When it has been determined that it is necessary for a minor to be placed in a county other than the minor's parent's or guardian's

county of residence, the specific reason the out-of-county placement is necessary shall be documented in the minor's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the minor, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a minor is to be placed out-of-county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the minor, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern in the receiving county. Upon implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the minor, shall be made available to the receiving county upon placement of the minor in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a minor is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the minor, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the minor, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the minor in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern to the receiving county.

(g) Whenever the probation officer must change the placement of the minor and is unable to find a suitable placement within the county and must place the minor outside the county, the placement shall not be made until he or she has served written notice on the parent or guardian at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The

parent or guardian may object to the placement not later than seven days after receipt of the notice and, upon objection, the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the minor's particular needs require placement outside the county.

(h) Where the court has ordered a minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(i) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the minor will be served by granting visitation rights to the minor's grandparents. The court shall clearly specify those rights to the supervising probation officer.

SEC. 5.5. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a minor pursuant to Section 361, the court shall first determine whether there is a parent of the minor, with whom the minor was not residing at the time that the events or conditions arose that brought the minor within the provisions of Section 300, who desires to assume custody of the minor. If that parent requests custody, the court shall place the minor with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the minor.

(b) If the court places the minor with such a parent it may do either of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the minor. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile

court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In such a case the court may order that reunification services be provided to the parent or guardian from whom the minor is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the minor.

(c) The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).

(d) Part 6 (commencing with Section 7950) of Division 12 of the Family Code shall apply to the placement of a minor pursuant to paragraphs (1) and (2) of subdivision (e).

(e) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility. Prior to any placement into a juvenile services facility as described in Article 2.6 (commencing with Section 1528) of Chapter 3 of Division 2 of the Health and Safety Code, the court shall make a determination that the minor meets the criteria set forth in Section 1528.2 of the Health and Safety Code. Prior to the placement of a minor between the ages of 13 and 14 years in a juvenile services facility, the court shall make a determination that a juvenile services facility placement best meets the needs of the minor.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(6) A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility as defined in Section 1530.8 of the Health and Safety Code, only under any of the following circumstances:

(A) When a case plan indicates that placement is for purposes of providing specialized treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment,

and the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1. The specialized treatment period shall not exceed 120 days, unless additional time is needed pursuant to the case plan as documented by the caseworker and approved by the caseworker's supervisor.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(f) (1) If the minor is taken from the physical custody of the minor's parent or guardian and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parent or guardian in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parent's or guardian's county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parent's or guardian's community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parent or guardian. In determining whether the minor should be moved, the probation officer shall take into consideration the potential harmful effects of disrupting the placement of the minor and the parent's or guardian's reason for the move.

(4) When it has been determined that it is necessary for a minor to be placed in a county other than the minor's parent's or guardian's county of residence, the specific reason the out-of-county placement is necessary shall be documented in the minor's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the

minor, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a minor is to be placed out-of-county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the minor, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern in the receiving county. Upon implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the minor, shall be made available to the receiving county upon placement of the minor in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a minor is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the minor, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the minor, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the minor in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern to the receiving county.

(g) Whenever the probation officer must change the placement of the minor and is unable to find a suitable placement within the county and must place the minor outside the county, the placement shall not be made until he or she has served written notice on the parent or guardian at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parent or guardian may object to the placement not later than seven days after receipt of the notice and, upon objection, the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if

it finds that the minor's particular needs require placement outside the county.

(h) Where the court has ordered a minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(i) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the minor will be served by granting visitation rights to the minor's grandparents. The court shall clearly specify those rights to the supervising probation officer.

SEC. 6. 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 and 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 parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to

Section 356.5; 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; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision 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. 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 the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer 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 that led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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.

(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. 6.5. 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 and 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 parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden

of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and 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. Whether or not the minor is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and

conditions of those services. If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer 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 that led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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 the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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.

(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. 6.7. 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 minor shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and 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 parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; 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 and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision 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 minor, 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 minor 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. 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 the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer 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 that led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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. 6.9. 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 calendar. The court shall advise all persons present at the hearing of the date of the future hearing and 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 parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and 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. Whether or not the minor is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 minor, 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services. If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer 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 that led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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 the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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 minor 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. 7. 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 and 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 parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision 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. 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 the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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.

(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. 7.5. 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 and 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 parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and 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 availed himself or herself of services provided. Whether or not the minor is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 if 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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 the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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.

(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. 7.7. 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 parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision 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 minor, 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 minor 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. 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 the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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 minor 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 minor 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. 7.9. 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 and 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 parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and 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 availed himself or herself of services provided. Whether or not the minor is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also 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 under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

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 minor, 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 pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the minor 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. The court shall order that those services be initiated, continued, or terminated.

(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 the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to

Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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 the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and 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 minor 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 minor

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. 8. 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 the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he

or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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.

(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. 9. Section 366.22 of the Welfare and Institutions Code, as added 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 the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366. Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. 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.

(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.

SEC. 10. Section 16500 of the Welfare and Institutions Code is amended to read:

16500. The state, through the department and county welfare departments, shall establish and support a public system of statewide child welfare services to be developed as rapidly as possible and to be available in each county of the state. All counties shall establish and maintain specialized organizational entities within the county welfare department which shall have sole responsibility for the operation of the child welfare services program.

The Legislature hereby declares its intent, in providing for this statewide system of child welfare services, that all children are entitled to be safe and free from abuse and neglect.

SEC. 11. Section 1.5 of this bill incorporates amendments to Section 300 of the Welfare and Institutions Code proposed by both this bill and AB 2679. 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 300 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2679, in which case Section 1 of this bill shall not become operative.

SEC. 12. Section 4.5 of this bill incorporates amendments to Section 361 of the Welfare and Institutions Code proposed by both this bill and AB 2647. 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 361 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2647, in which case Section 4 of this bill shall not become operative.

SEC. 13. Section 5.5 of this bill incorporates amendments to Section 361.2 of the Welfare and Institutions Code proposed by both this bill and SB 575. 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 361.2 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 575, in which case Section 5 of this bill shall not become operative.

SEC. 14. (a) Sections 6.5 and 7.5 of this bill incorporate amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 1524. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, (3) AB 2679 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1524, in which case Sections 6, 6.7, 6.9, 7, 7.7, and 7.9 of this bill shall not become operative.

(b) Sections 6.7 and 7.7 of this bill incorporate amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 2679. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, (3) AB 1524 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2679 in which case Sections 6, 6.5, 6.9, 7, 7.5, and 7.9 of this bill shall not become operative.

(c) Sections 6.9 and 7.9 of this bill incorporate amendments to Section 366.21 of the Welfare and Institutions Code proposed by this bill, AB 1524, and AB 2679. They 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 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1524 and AB 2679, in which case Sections 6, 6.5, 6.7, 7, 7.5, and 7.7 of this bill shall not become operative.

CHAPTER 1085

An act to add Section 54981.7 to the Government Code, relating to public safety services.

[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 54981.7 is added to the Government Code, to read:

54981.7. A city or county may enter into a contract with an Indian tribe for the city or county to provide fire protection services and police or sheriff protection services for the Indian tribe either solely on Indian lands, or on the Indian lands and territory adjacent to those Indian lands. Nothing in this section shall be construed to alter or affect federal Public Law 280, relating to state jurisdiction in Indian lands.

CHAPTER 1086

An act to amend Sections 190.6, 190.7, 190.8, 190.9, and 1240.1 of the Penal 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 190.6 of the Penal Code is amended to read:

190.6. (a) The Legislature finds that the sentence in all capital cases should be imposed expeditiously.

(b) Therefore, in all cases in which a sentence of death has been imposed on or after January 1, 1997, the opening appellate brief in the appeal to the State Supreme Court shall be filed no later than seven months after the certification of the record for completeness under subdivision (d) of Section 190.8 or receipt by the appellant's counsel of the completed record, whichever is later, except for good cause. However, in those cases where the trial transcript exceeds 10,000 pages, the briefing shall be completed within the time limits and pursuant to the procedures set by the rules of court adopted by the Judicial Council.

(c) In all cases in which a sentence of death has been imposed on or after January 1, 1997, it is the Legislature's goal that the appeal be decided and an opinion reaching the merits be filed within 210 days of the completion of the briefing. However, where the appeal and a

petition for writ of habeas corpus is heard at the same time, the petition should be decided and an opinion reaching the merits should be filed within 210 days of the completion of the briefing for the petition.

(d) The failure of the parties or the Supreme Court to meet or comply with the time limit provided by this section shall not be a ground for granting relief from a judgment of conviction or sentence of death.

SEC. 2. Section 190.7 of the Penal Code is amended to read:

190.7. (a) The "entire record" referred to in Section 190.6 includes, but is not limited to, the following:

(1) The normal and additional record prescribed in the rules adopted by the Judicial Council pertaining to an appeal taken by the defendant from a judgment of conviction.

(2) A copy of any other paper or record on file or lodged with the superior or municipal court and a transcript of any other oral proceeding reported in the superior or municipal court pertaining to the trial of the cause.

(b) Notwithstanding this section, the Judicial Council may adopt rules, not inconsistent with the purpose of Section 190.6, specifically pertaining to the content, preparation and certification of the record on appeal when a judgment of death has been pronounced.

SEC. 3. Section 190.8 of the Penal Code is amended to read:

190.8. (a) In any case in which a death sentence has been imposed, the record on appeal shall be expeditiously certified in two stages, the first for completeness and the second for accuracy, as provided by this section. The trial court may use all reasonable means to ensure compliance with all applicable statutes and rules of court pertaining to record certification in capital appeals, including, but not limited to, the imposition of sanctions.

(b) Within 30 days of the imposition of the death sentence, the clerk of the superior court shall provide to trial counsel copies of the clerk's transcript and shall deliver the transcript as provided by the court reporter. Trial counsel shall promptly notify the court if he or she has not received the transcript within 30 days.

(c) During the course of a trial in which the death penalty is being sought, trial counsel shall alert the court's attention to any errors in the transcripts incidentally discovered by counsel while reviewing them in the ordinary course of trial preparation. The court shall periodically request that trial counsel provide a list of errors in the trial transcript during the course of trial and may hold hearings in connection therewith.

Corrections to the record shall not be required to include immaterial typographical errors that cannot conceivably cause confusion.

(d) The trial court shall certify the record for completeness and for incorporation of all corrections, as provided by subdivision (c), no later than 90 days after entry of the imposition of the death sentence

unless good cause is shown. However, this time period may be extended for proceedings in which the trial transcript exceeds 10,000 pages in accordance with the timetable set forth in, or for good cause pursuant to the procedures set forth in, the rules of court adopted by the Judicial Council.

(e) Following the imposition of the death sentence and prior to the deadline set forth in subdivision (d), the trial court shall hold one or more hearings for trial counsel to address the completeness of the record and any outstanding errors that have come to their attention and to certify that they have reviewed all docket sheets to ensure that the record contains transcripts for any proceedings, hearings, or discussions that are required to be reported and that have occurred in the course of the case in any court, as well as all documents required by this code and the rules adopted by the Judicial Council.

(f) The clerk of the trial court shall deliver a copy of the record on appeal to appellate counsel when the clerk receives notice of counsel's appointment or retention, or when the record is certified for completeness under subdivision (d), whichever is later.

(g) The trial court shall certify the record for accuracy no later than 120 days after the record has been delivered to appellate counsel. However, this time may be extended pursuant to the timetable and procedures set forth in the rules of court adopted by the Judicial Council. The trial court may hold one or more status conferences for purposes of timely certification of the record for accuracy, as set forth in the rules of court adopted by the Judicial Council.

(h) The Supreme Court shall identify in writing to the Judicial Council any case that has not met the time limit for certification of the record for completeness under subdivision (d) or for accuracy under subdivision (g), and shall identify those cases, and its reasons, for which it has granted an extension of time. The Judicial Council shall include this information in its annual report to the Legislature.

(i) As used in this section, "trial counsel" means both the prosecution and the defense counsel in the trial in which the sentence of death has been imposed.

(j) This section shall be implemented pursuant to rules of court adopted by the Judicial Council.

(k) This section shall only apply to those proceedings in which a sentence of death has been imposed following a trial that was commenced on or after January 1, 1997.

SEC. 4. Section 190.9 of the Penal Code is amended to read:

190.9. (a) (1) In any case in which a death sentence may be imposed, all proceedings conducted in the municipal and superior courts, including all conferences and proceedings, whether in open court, in conference in the courtroom, or in chambers, shall be conducted on the record with a court reporter present. In superior court, the court reporter shall prepare and certify a daily transcript of these proceedings. In municipal court, the proceedings, other

than the preliminary hearing for which daily transcripts shall be prepared, shall be reported but need not be transcribed until the municipal court receives notice as prescribed in paragraph (2) of subdivision (a).

(2) Upon receiving notification from the prosecution that the death penalty is being sought, the superior court shall notify the municipal court. Upon this notification, the municipal court shall order the transcription and preparation of the record of all proceedings in the municipal court in the manner prescribed by the Judicial Council in the rules of court. The record of all proceedings in municipal court shall be certified by the municipal court to the superior court no later than 120 days following notification by the superior court unless the superior court grants an extension of time pursuant to rules of court adopted by the Judicial Council. Upon certification, the municipal court shall forward the record to the superior court for incorporation into the superior court record.

(b) Any computer-readable transcript produced by court reporters pursuant to this section shall conform to the requirements of subdivision (c) of Section 269 of the Code of Civil Procedure.

SEC. 5. Section 1240.1 of the Penal Code is amended to read:

1240.1. (a) In any noncapital criminal, juvenile court, or civil commitment case wherein the defendant would be entitled to the appointment of counsel on appeal if indigent, it shall be the duty of the attorney who represented the person at trial to provide counsel and advice as to whether arguably meritorious grounds exist for reversal or modification of the judgment on appeal. The attorney shall admonish the defendant that he or she is not able to provide advice concerning his or her own competency, and that the State Public Defender or other counsel should be consulted for advice as to whether an issue regarding the competency of counsel should be raised on appeal. The trial court may require trial counsel to certify that he or she has counseled the defendant as to whether arguably meritorious grounds for appeal exist at the time a notice of appeal is filed. Nothing in this section shall be construed to prevent any person having a right to appeal from doing so.

(b) It shall be the duty of every attorney representing an indigent defendant in any criminal, juvenile court, or civil commitment case to execute and file on his or her client's behalf a timely notice of appeal when the attorney is of the opinion that arguably meritorious grounds exist for a reversal or modification of the judgment or orders to be appealed from, and where, in the attorney's judgment, it is in the defendant's interest to pursue any relief that may be available to him or her on appeal; or when directed to do so by a defendant having a right to appeal.

With the notice of appeal the attorney shall file a brief statement of the points to be raised on appeal and a designation of any document, paper, pleading, or transcript of oral proceedings necessary to properly present those points on appeal when the

document, paper, pleading or transcript of oral proceedings would not be included in the normal record on appeal according to the applicable provisions of the California Rules of Court. The executing of the notice of appeal by the defendant's attorney shall not constitute an undertaking to represent the defendant on appeal unless the undertaking is expressly stated in the notice of appeal.

If the defendant was represented by appointed counsel on the trial level, or if it appears that the defendant will request the appointment of counsel on appeal by reason of indigency, the trial attorney shall also assist the defendant in preparing and submitting a motion for the appointment of counsel and any supporting declaration or affidavit as to the defendant's financial condition. These documents shall be filed with the trial court at the time of filing a notice of appeal, and shall be transmitted by the clerk of the trial court to the clerk of the appellate court within three judicial days of their receipt. The appellate court shall act upon that motion without unnecessary delay. An attorney's failure to file a motion for the appointment of counsel with the notice of appeal shall not foreclose the defendant from filing a motion at any time it becomes known to him or her that the attorney has failed to do so, or at any time he or she shall become indigent if he or she was not previously indigent.

(c) The State Public Defender shall, at the request of any attorney representing a prospective indigent appellant or at the request of the prospective indigent appellant himself or herself, provide counsel and advice to the prospective indigent appellant or attorney as to whether arguably meritorious grounds exist on which the judgment or order to be appealed from would be reversed or modified on appeal.

(d) The failure of a trial attorney to perform any duty prescribed in this section, assign any particular point or error in the notice of appeal, or designate any particular thing for inclusion in the record on appeal shall not foreclose any defendant from filing a notice of appeal on his or her own behalf or from raising any point or argument on appeal; nor shall it foreclose the defendant or his or her counsel on appeal from requesting the augmentation or correction of the record on appeal in the reviewing court.

(e) (1) In order to expedite certification of the entire record on appeal in all capital cases, the defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor shall continue to represent the respective parties. Each counsel's obligations extend to taking all steps necessary to facilitate the preparation and timely certification of the record of both municipal and superior court proceedings.

(2) The duties imposed on trial counsel in paragraph (1) shall not foreclose the defendant's appellate counsel from requesting additions or corrections to the record on appeal in either the trial court or the Supreme Court in a manner provided by rules of court adopted by the Judicial Council.

(f) The court shall assign a court reporter who uses computer-aided transcription equipment to report all proceedings under this section. Failure to comply with the requirements of this section relating to the assignment of court reporters who use computer-aided transcription equipment shall not be a ground for reversal.

(g) Any computer-readable transcript produced by court reporters pursuant to this section shall conform to the requirements of subdivision (c) of Section 269 of the Code of Civil Procedure.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because any costs mandated by the state under this act are funded out of the trial court funding apportioned pursuant to Chapter 13 (commencing with Section 77000) of Title 8 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 1087

An act to amend Sections 7480, 15640, 15641, 15642, 15643, 15644, and 15645 of the Government Code, and to amend Sections 51, 62, 63.1, 75.41, 75.60, 95.31, 107.6, 170, 205.5, 401.5, 439.2, 441, 503, 504, 1624.4, 4831, 5364, 6456, 6479.3, 6480.1, 6480.10, 6591, 6701, 8708, 8876, 11319, 11354, 11405, 11430, 11555, 11576, 32102, 32291, 38405, 38412, 38423, 38451, 38606, 38616, 40102, 45651, 45651.5, 45655, 55225, 55330, 60101, 60122, 60207, and 60632 of, to add Sections 201.6, 401.9, 6902.3, 8127.5, 9151.5, 30266, 30473.5, 32457, 32557, 41052.1, 43451.5, 46501.5, 50139.5, 55221.5, 60045, 60046, and 60521.5 to, and to repeal Section 9154 of, the Revenue and Taxation Code, relating to 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. 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 and loan 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 and loan association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings and loan association to furnish, and a bank, credit union, or savings and loan 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 and loan 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 Superintendent of Banks by reference to Division 1 (commencing with Section 99), Division 15 (commencing

with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Department of Savings and Loan by reference to Division 2 (commencing with Section 5000) of the Financial Code.

(3) With respect to the Corporations Commissioner by reference to Division 5 (commencing with Section 14000) and Division 7 (commencing with Section 18000) of the Financial Code.

(4) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(5) 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. 1.5. 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. 2. Section 15640 of the Government Code is amended to read:

15640. (a) The State Board of Equalization shall make surveys in each county and city and county to determine the adequacy of the procedures and practices employed by the county assessor in the valuation of property for the purposes of taxation and in the performance generally of the duties enjoined upon him or her.

(b) The surveys shall include a review of the practices of the assessor with respect to uniformity of treatment of all classes of property to ensure that all classes are treated equitably, and that no class receives a systematic overvaluation or undervaluation as compared to other classes of property in the county or city and county.

(c) The surveys may include a sampling of assessments from the local assessment rolls. Any sampling conducted pursuant to subdivision (b) of Section 15643 shall be sufficient in size and dispersion to insure an adequate representation therein of the several classes of property throughout the county.

(d) In addition, the board may periodically conduct statewide surveys limited in scope to specific topics, issues, or problems requiring immediate attention.

(e) The board's duly authorized representatives shall, for purposes of these surveys, have access to, and may make copies of, all records, public or otherwise, maintained in the office of any county assessor.

(f) The board shall develop procedures to carry out its duties under this section after consultation with the California Assessors' Association. The board shall also provide a right to each county assessor to appeal to the board appraisals made within his or her county where differences have not been resolved before completion of a field review and shall adopt procedures to implement the appeal process.

SEC. 3. Section 15641 of the Government Code is amended to read:

15641. In order to verify the information furnished to the assessor of the county, the board may audit the original books of account, wherever located, of any person owning, claiming, possessing or controlling property included in a survey conducted pursuant to this chapter when the property is of a type for which accounting records are useful sources of appraisal data.

No appraisal data relating to individual properties obtained for the purposes of any survey under this chapter shall be made public, and no state or local officer or employee thereof gaining knowledge thereof in any action taken under this chapter shall make any disclosure with respect thereto except as that may be required for the purposes of this chapter. Except as specifically provided herein, any appraisal data may be disclosed by the board to any assessor, or by the board or the assessor to the assessee of the property to which the data relate.

The board shall permit an assessee of property to inspect, at the appropriate office of the board, any information and records relating to an appraisal of his or her property, including "market data" as defined in Section 408. However, no information or records, other than "market data," which relate to the property or business affairs of a person other than the assessee shall be disclosed.

Nothing in this section shall be construed as preventing examination of that data by law enforcement agencies, grand juries, boards of supervisors, or their duly authorized agents, employees, or representatives conducting an investigation of an assessor's office pursuant to Section 25303, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine that data.

SEC. 4. Section 15642 of the Government Code is amended to read:

15642. The board shall send members of its staff to the several counties and cities and counties of the state for the purpose of

conducting that research it deems essential for the completion of a survey report pursuant to Section 15640 with respect to each county and city and county. The survey report shall show the volume of assessing work to be done as measured by the various types of property to be assessed and the number of individual assessments to be made, the responsibilities devolving upon the county assessor, and the extent to which assessment practices are consistent with or differ from state law and regulations. The report may show the county assessor's requirements for maps, records, and other equipment and supplies essential to the adequate performance of his or her duties, the number and classification of personnel needed by him or her for the adequate conduct of his or her office, and the fiscal outlay required to secure for that office sufficient funds to ensure the proper performance of its duties.

SEC. 5. Section 15643 of the Government Code is amended to read:

15643. (a) The board shall proceed with the surveys of the assessment procedures and practices in the several counties and cities and counties as rapidly as feasible, and shall repeat or supplement each survey at least once in five years.

(b) The surveys of the 10 largest counties and cities and counties shall include a sampling of assessments on the local assessment rolls as described in Section 15640. In addition, the board shall each year, in accordance with procedures established by the board by regulation, select at random at least three of the remaining counties or cities and counties, and conduct a sample of assessments on the local assessment roll in those counties. If the board finds that a county or city and county has "significant assessment problems," as provided in Section 75.60 of the Revenue and Taxation Code, a sample of assessments will be conducted in that county or city and county in lieu of a county or city and county selected at random. The 10 largest counties and cities and counties shall be determined based upon the total value of locally assessed property located in the counties and cities and counties on the lien date that falls within the calendar year of 1995 and every fifth calendar year thereafter.

(c) The statewide surveys which are limited in scope to specific topics, issues, or problems may be conducted whenever the board determines that a need exists to conduct a survey.

(d) When requested by the legislative body or the assessor of any county or city and county to perform a survey not otherwise scheduled, the board may enter into a contract with the requesting local agency to conduct that survey. The contract may provide for a board sampling of assessments on the local roll. The amount of the contracts shall not be less than the cost to the board, and shall be subject to regulations approved by the Director of General Services.

SEC. 6. Section 15644 of the Government Code is amended to read:

15644. The surveys shall incorporate reviews of existing assessment procedures and practices as well as recommendations for their improvement in conformity with the information developed in the surveys as to what is required to afford the most efficient assessment of property for tax purposes in the counties or cities and counties concerned.

SEC. 7. Section 15645 of the Government Code is amended to read:

15645. (a) Upon completion of a survey of the procedures and practices of a county assessor, the board shall prepare a written survey report setting forth its findings and recommendations and transmit a copy to the assessor. In addition the board may file with the assessor a confidential report containing matters relating to personnel. Before preparing its written survey report, the board shall meet with the assessor to discuss and confer on those matters which may be included in the written survey report.

(b) Within 30 days after receiving a copy of the survey report, the assessor may file with the board a written response to the findings and recommendations in the survey report.

The board may, for good cause, extend the period for filing the response.

(c) The survey report, together with the assessor's response, if any, and the board's comments, if any, shall constitute the final survey report. The final survey report shall be issued by the board within two years after the date the board began the survey. Within a year after receiving a copy of the final survey report, and annually thereafter, no later than the date on which the initial report was issued by the board and until all issues are resolved, the assessor shall file with the board of supervisors a report, indicating the manner in which the assessor has implemented, intends to implement or the reasons for not implementing, the recommendations of the survey report, with copies of that response being sent to the Governor, the Attorney General, the State Board of Equalization, the Senate and Assembly and to the grand juries and assessment appeals boards of the counties to which they relate.

SEC. 8. Section 51 of the Revenue and Taxation Code is amended to read:

51. (a) For purposes of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for each lien date after the lien date in which the base year value is determined pursuant to Section 110.1, the taxable value of real property shall, except as otherwise provided in subdivision (b) or (c), be the lesser of:

(1) Its base year value, compounded annually since the base year by an inflation factor, which shall be determined as follows:

(A) For any assessment year commencing prior to January 1, 1985, the inflation factor shall be the percentage change in the cost of living, as defined in Section 2212.

(B) For any assessment year commencing after January 1, 1985, the inflation factor shall be the percentage change, rounded to the nearest one-thousandth of 1 percent, from December of the prior fiscal year to December of the current fiscal year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations. In no event shall the percentage increase for any assessment year determined pursuant to subparagraph (A) or (B) exceed 2 percent of the prior year's value.

(2) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value.

(b) If the real property was damaged or destroyed by disaster, misfortune, or calamity and the board of supervisors of the county in which the real property is located has not adopted an ordinance pursuant to Section 170, or any portion of the real property has been removed by voluntary action by the taxpayer, the taxable value of the property shall be the sum of the following:

(1) The lesser of its base year value of land determined under paragraph (1) of subdivision (a) or full cash value of land determined pursuant to paragraph (2) of subdivision (a).

(2) The lesser of its base year value of improvements determined pursuant to paragraph (1) of subdivision (a) or the full cash value of improvements determined pursuant to paragraph (2) of subdivision (a).

The sum determined under this subdivision shall then become the base year value of the real property until that property is restored, repaired, or reconstructed or other provisions of law require establishment of a new base year value.

(c) If the real property was damaged or destroyed by disaster, misfortune or calamity and the board of supervisors in the county in which the real property is located has adopted an ordinance pursuant to Section 170, the taxable value of the real property shall be its assessed value as computed pursuant to Section 170.

(d) For purposes of this section, "real property" means that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately.

(e) Nothing in this section shall be construed to require the assessor to make an annual reappraisal of all assessable property. However, for each lien date after the first lien date for which the taxable value of property is reduced pursuant to paragraph (2) of subdivision (a), the value of that property shall be annually reappraised at its full cash value as defined in Section 110 until that value exceeds the value determined pursuant to paragraph (1) of subdivision (a). In no event shall the assessor condition the implementation of the preceding sentence in any year upon the filing of an assessment appeal.

SEC. 9. Section 62 of the Revenue and Taxation Code is amended to read:

62. Change in ownership shall not include:

(a) (1) Any transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common.

(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) of Section 64.

(b) Any transfer for the purpose of perfecting title to the property.

(c) (1) The creation, assignment, termination, or reconveyance of a security interest; or (2) the substitution of a trustee under a security instrument.

(d) Any transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

(e) Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63.

(f) The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

(g) Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than mobilehomes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(h) Any purchase, redemption, or other transfer of the shares or units of participation of a group trust, pooled fund, common trust

fund, or other collective investment fund established by a financial institution.

(i) Any transfer of stock or membership certificate in a housing cooperative that was financed under one mortgage, provided that mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or that housing cooperative was financed or assisted pursuant to Section 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or the housing cooperative was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or interest reduction assistance by reason of the income level of that person or family shall constitute a change of ownership.

(j) Any transfer during the period March 1, 1975, to March 1, 1981, between coowners in any property that was held by them as coowners for all or part of that period, and which was eligible for a homeowner's exemption during the period of the coownership, notwithstanding any other provision of this chapter. Any transferee whose interest was revalued in contravention of the provisions of this subdivision shall obtain a reversal of that revaluation with respect to the 1980–81 assessment year and thereafter, upon application to the county assessor of the county in which the property is located filed on or before March 26, 1982. No refunds shall be made under this subdivision for any assessment year prior to the 1980–81 fiscal year.

(k) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h holding title for the benefit of any of these corporations, or any combination thereof (including any transfer from one such entity to the same type of entity), provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(*l*) Any transfer, that would otherwise be a transfer subject to reappraisal under this chapter, between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties, provided that the original relationship between the grantor and grantee is not changed.

(m) Any intrafamily transfer of an eligible dwelling unit from a parent or parents or legal guardian or guardians to a minor child or children or between or among minor siblings as a result of a court order or judicial decree due to the death of the parent or parents. As used in this subdivision, "eligible dwelling unit" means the dwelling unit that was the principal place of residence of the minor child or

children prior to the transfer and remains the principal place of residence of the minor child or children after the transfer.

(n) Any transfer of an eligible dwelling unit, whether by will, devise, or inheritance, from a parent or parents to a child or children, or from a guardian or guardians to a ward or wards, if the child, children, ward, or wards have been disabled, as provided in subdivision (e) of Section 12304 of the Welfare and Institutions Code, for at least five years preceding the transfer and if the child, children, ward, or wards have adjusted gross income that, when combined with the adjusted gross income of a spouse or spouses, parent or parents, and child or children, does not exceed twenty thousand dollars ($20,000) in the year in which the transfer occurs. As used in this subdivision, "child" or "ward" includes a minor or an adult. As used in this subdivision, "eligible dwelling unit" means the dwelling unit that was the principal place of residence of the child or children, or ward or wards for at least five years preceding the transfer and remains the principal place of residence of the child or children, or ward or wards after the transfer. Any transferee whose property was reassessed in contravention of the provisions of this subdivision for the 1984–85 assessment year shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than 30 days after the later of either the transferee's receipt of notice of reassessment pursuant to Section 75.31 or the end of the 1984–85 fiscal year.

SEC. 9.5. Section 62 of the Revenue and Taxation Code is amended to read:

62. Change in ownership shall not include:

(a) (1) Any transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common.

(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) of Section 64.

(b) Any transfer for the purpose of perfecting title to the property.

(c) (1) The creation, assignment, termination, or reconveyance of a security interest; or (2) the substitution of a trustee under a security instrument.

(d) Any transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present

beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

(e) Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63.

(f) The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

(g) Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than mobilehomes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), that are on leased land and have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(h) Any purchase, redemption, or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.

(i) Any transfer of stock or membership certificate in a housing cooperative that was financed under one mortgage, provided that mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or that housing cooperative was financed or assisted pursuant to Section 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or the housing cooperative was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or interest reduction assistance by reason of the income level of that person or family shall constitute a change of ownership.

(j) Any transfer during the period March 1, 1975, to March 1, 1981, between coowners in any property that was held by them as coowners for all or part of that period, and which was eligible for a homeowner's exemption during the period of the coownership, notwithstanding any other provision of this chapter. Any transferee

whose interest was revalued in contravention of the provisions of this subdivision shall obtain a reversal of that revaluation with respect to the 1980–81 assessment year and thereafter, upon application to the county assessor of the county in which the property is located filed on or before March 26, 1982. No refunds shall be made under this subdivision for any assessment year prior to the 1980–81 fiscal year.

(k) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h holding title for the benefit of any of these corporations, or any combination thereof (including any transfer from one such entity to the same type of entity), provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(*l*) Any transfer, that would otherwise be a transfer subject to reappraisal under this chapter, between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties, provided that the original relationship between the grantor and grantee is not changed.

(m) Any intrafamily transfer of an eligible dwelling unit from a parent or parents or legal guardian or guardians to a minor child or children or between or among minor siblings as a result of a court order or judicial decree due to the death of the parent or parents. As used in this subdivision, "eligible dwelling unit" means the dwelling unit that was the principal place of residence of the minor child or children prior to the transfer and remains the principal place of residence of the minor child or children after the transfer.

(n) Any transfer of an eligible dwelling unit, whether by will, devise, or inheritance, from a parent or parents to a child or children, or from a guardian or guardians to a ward or wards, if the child, children, ward, or wards have been disabled, as provided in subdivision (e) of Section 12304 of the Welfare and Institutions Code, for at least five years preceding the transfer and if the child, children, ward, or wards have adjusted gross income that, when combined with the adjusted gross income of a spouse or spouses, parent or parents, and child or children, does not exceed twenty thousand dollars ($20,000) in the year in which the transfer occurs. As used in this subdivision, "child" or "ward" includes a minor or an adult. As used in this subdivision, "eligible dwelling unit" means the dwelling unit that was the principal place of residence of the child or children, or ward or wards for at least five years preceding the transfer and remains the principal place of residence of the child or children, or ward or wards after the transfer. Any transferee whose property was reassessed in contravention of the provisions of this subdivision for the 1984–85 assessment year shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than 30 days after the later of either

the transferee's receipt of notice of reassessment pursuant to Section 75.31 or the end of the 1984–85 fiscal year.

(o) Any transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

SEC. 10. Section 63.1 of the Revenue and Taxation Code is amended to read:

63.1. (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include the following purchases or transfers for which a claim is filed pursuant to this section:

(1) The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children.

(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

(3) (A) Subject to subparagraph (B), the purchase or transfer of real property described in paragraphs (1) and (2) of subdivision (a) occurring on or after March 27, 1996, between grandparents and their grandchild or grandchildren, if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1) of subdivision (a). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (2) of subdivision (a) and the full cash value of a principal residence that fails to qualify for exclusion as a result of the preceding sentence shall be included in applying, for purposes of paragraph (2) of subdivision (a), the one million dollar ($1,000,000) full cash value limit specified in paragraph (2) of subdivision (a).

(b) (1) For purposes of paragraph (1) of subdivision (a), "principal residence" means a dwelling for which a homeowners' exemption or a disabled veterans' residence exemption has been granted in the name of the eligible transferor. "Principal residence" includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence.

(2) For purposes of paragraph (2) of subdivision (a), the one million dollar ($1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property,

other than the principal residence, of that eligible transferor. The exclusion shall not apply to any property in which the eligible transferor's interest was received through a transfer, or transfers, excluded from change in ownership by the provisions of either subdivision (f) of Section 62 or subdivision (b) of Section 65, unless the transferor qualifies as an original transferor under subdivision (b) of Section 65. In the case of any purchase or transfer subject to this paragraph involving two or more eligible transferors, the transferors may elect to combine their separate one million dollar ($1,000,000) exclusions and, upon making that election, the combined amount of their separate exclusions shall apply to any property jointly sold or transferred by the electing transferors, provided that in no case shall the amount of full cash value of real property of any one eligible transferor excluded under this election exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

(c) As used in this section:

(1) "Purchase or transfer between parents and their children" means either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children. For purposes of this section, the date of any transfer between parents and their children under a will or intestate succession shall be the date of the decedent's death, if the decedent died on or after November 6, 1986.

(2) "Purchase or transfer of real property between grandparents and their grandchild or grandchildren" means a purchase or transfer on or after March 27, 1996, from a grandparent or grandparents to a grandchild or grandchildren if all of the parents of that grandchild or those grandchildren who qualify as the children of the grandparents are deceased as of the date of the transfer. For purposes of this section, the date of any transfer between grandparents and their grandchildren under a will or by intestate succession shall be the date of the decedent's death.

(3) "Children" means any of the following:

(A) Any child born of the parent or parents, except a child, as defined in subparagraph (D), who has been adopted by another person or persons.

(B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For purposes of this paragraph, the relationship of stepparent and stepchild shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.

(C) Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce

or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(4) "Grandchild" or "grandchildren" means any child or children of the child or children of the grandparent or grandparents.

(5) "Full cash value" means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section.

(6) "Eligible transferor" means a grandparent, parent, or child of an eligible transferee.

(7) "Eligible transferee" means a parent, child, or grandchild of an eligible transferor.

(8) "Real property" means real property as defined in Section 104. Real property does not include any interest in a legal entity.

(9) "Transfer" includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(10) "Social security number" also includes a taxpayer identification number issued by the Internal Revenue Service in the case in which the taxpayer is a foreign national who cannot obtain a social security number.

(d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(A) A written certification by the transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate made under penalty of perjury that the transferee is a grandparent, parent, child, or grandchild of the transferor. In the case of a grandparent-grandchild transfer, the written certification shall also include a certification that all the parents of the grandchild or grandchildren who qualify as children of the grandparents were deceased as of the date of the purchase or transfer and that the grandchild or grandchildren did or did not receive a principal residence excludable under paragraph (1) of subdivision (a) from the deceased parents, and that the grandchild or grandchildren did or did not receive real property other than a principal residence excludable under paragraph (2) of subdivision (a) from the deceased parents. The claimant shall provide legal substantiation of any matter certified pursuant to this subparagraph at the request of the county assessor.

(B) A copy of a written certification by the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate made under penalty of perjury that the transferor is a grandparent, parent, or child of the transferee. The written certification shall also include either or both of the following:

(i) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(ii) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor that is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the social security number of each eligible transferor, and the names of the eligible transferees of that property.

(2) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee from the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (e) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.

(e) The State Board of Equalization shall design the form for claiming eligibility. Any claim under this section shall be filed:

(1) For transfers of real property between parents and their children occurring prior to September 30, 1990, within three years after the date of the purchase or transfer of real property for which the claim is filed.

(2) For transfers of real property between parents and their children occurring on or after September 30, 1990, and for the purchase or transfer of real property between grandparents and their grandchildren occurring on or after March 27, 1996, within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier.

(3) Notwithstanding paragraphs (1) and (2), a claim shall be deemed to be timely filed if it is filed within six months after the date of mailing of a notice of supplemental or escape assessment, issued

as a result of the purchase or transfer of real property for which the claim is filed.

(4) Unless otherwise expressly provided, the provisions of this subdivision shall apply to any purchase or transfer of real property that occurred on or after November 6, 1986.

(f) The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to subdivision (d). Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the social security number of each eligible transferor, and any other information the board shall require in order to monitor the one million dollar ($1,000,000) limitation in paragraph (2) of subdivision (a).

(g) This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree. Nothing in this subdivision shall be construed as conflicting with paragraph (1) of subdivision (c) or the general principle that transfers by reason of death occur at the time of death.

(h) (1) Except as provided in paragraph (2), this section shall apply to purchases and transfers of real property completed on or after November 6, 1986, and shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, that occurred prior to that date.

(2) This section shall apply to purchases or transfers of real property between grandparents and their grandchildren occurring on or after March 27, 1996, and, with respect to purchases or transfers of real property between grandparents and their grandchildren, shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, that occurred prior to that date.

SEC. 11. Section 75.41 of the Revenue and Taxation Code is amended to read:

75.41. (a) The auditor shall apply the current year's tax rate, as defined in Section 75.4, to the supplemental assessment or assessments, computing the amount of taxes that would be due for a full year. If the tax rate for the "roll being prepared" is known, the rate may be used with respect to the fiscal year to which it applies, rather than the current year's tax rate as defined in Section 75.4. If the tax rate for the "roll being prepared" is not known, the current year's tax rate as defined in Section 75.4 shall be used. For property on the supplemental roll, the taxes due shall be computed in two equal installments.

(b) The taxes due shall be adjusted by a proration factor to reflect the portion of the tax year remaining as determined by the date on which the change in ownership occurred or the new construction was completed. In computing the portion of the tax year remaining, the

change in ownership or completion of new construction shall be presumed to have occurred on the first day of the month following the date on which change in ownership or completion of new construction occurred.

(c) (1) If the presumed date specified in subdivision (b) is February 1, the taxes on the supplemental assessment for the current roll shall be multiplied by 0.42, and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(2) If the presumed date specified in subdivision (b) is March 1, the taxes on the supplemental assessment for the current roll shall be multiplied by 0.33, and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(3) If the presumed date specified in subdivision (b) is April 1, the taxes on the supplemental assessment for the current roll shall be multiplied by 0.25, and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(4) If the presumed date specified in subdivision (b) is May 1, the taxes on the supplemental assessment for the current roll shall be multiplied by 0.17, and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(5) If the presumed date specified in subdivision (b) is June 1, the taxes on the supplemental assessment for the current roll shall be multiplied by 0.08, and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(6) If the presumed date specified in subdivision (b) is July 1, no supplemental assessment shall be made on the current roll, and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(7) If the presumed date specified in subdivision (b) is on or after August 1, and on or before January 1, the following table of factors shall be used:

If the presumed date is:	The taxes on the supplemental assessment on the current roll shall be multiplied by:
August 1	0.92
September 1	0.83
October 1	0.75
November 1	0.67
December 1	0.58
January 1	0.50

(d) After computing the supplemental taxes due, if the total is twenty dollars ($20) or less, the auditor may cancel the amount as provided by Section 4986.8.

(e) If the supplemental assessment is a negative amount, the auditor shall follow the procedures of this section to determine the amount of refund to which the assessee may be entitled.

SEC. 12. Section 75.60 of the Revenue and Taxation Code is amended to read:

75.60. (a) Notwithstanding any other provision of law, the board of supervisors of an eligible county or city and county, upon the adoption of a method identifying the actual administrative costs associated with the supplemental assessment roll, may direct the county auditor to allocate to the county or city and county, prior to the allocation of property tax revenues pursuant to Chapter 6 (commencing with Section 95) and prior to the allocation made pursuant to Section 75.70, an amount equal to the actual administrative costs, but not to exceed 5 percent of the revenues that have been collected on or after January 1, 1987, due to the assessments under this chapter. Those revenues shall be used solely for the purpose of administration of this chapter, regardless of the date those costs are incurred.

(b) For purposes of this section:

(1) "Actual administrative costs" includes only those direct costs for administration, data processing, collection, and appeal that are incurred by county auditors, assessors, and tax collectors. "Actual administrative costs" also includes those indirect costs for administration, data processing, collections, and appeal that are incurred by county auditors, assessors, and tax collectors and are allowed by state and federal audit standards pursuant to the A-87 Cost Allocation Program.

(2) "Eligible county or city and county" means a county or city and county that has been certified by the State Board of Equalization as an eligible county or city and county. The State Board of Equalization shall certify a county or city and county as an eligible county or city and county only if both of the following are determined to exist:

(A) The average assessment level in the county or city and county is at least 95 percent of the assessment level required by statute, as determined by the board's most recent survey of that county or city and county performed pursuant to Section 15640 of the Government Code.

(B) For any survey of a county assessment roll for the 1996–97 fiscal year and each fiscal year thereafter, the sum of the absolute values of the differences from the statutorily required assessment level described in subparagraph (A) does not exceed 7.5 percent of the total amount of the county's or city and county's statutorily required assessed value, as determined pursuant to the board's survey described in subparagraph (A).

(3) Each certification of a county or city and county shall be valid only until the next survey made by the board. If a county or city and county has been certified following a survey that includes a sampling of assessments, the board may continue to certify that county or city and county following a survey that does not include sampling if the board finds in the survey conducted without sampling that there are no significant assessment problems in the county or city and county. The board shall, by regulation, define "significant assessment problems" for purposes of this section, and that definition shall include objective standards to measure performance. If the board finds in the survey conducted without sampling that significant assessment problems exist, the board shall conduct a sampling of assessments in that county or city and county to determine if it is an eligible county or city and county. If a county or city and county is not certified by the board, it may request a new survey in advance of the regularly scheduled survey, provided that it agrees to pay for the cost of the survey.

SEC. 13. Section 95.31 of the Revenue and Taxation Code, as amended by Senate Bill 218, is amended to read:

95.31. (a) (1) Notwithstanding any other provision of law, any eligible county may, upon the recommendation of the county assessor, and by resolution of the board of supervisors of that county adopted not later than December 1 of the fiscal year for which it is to first apply, elect to participate in the State-County Property Tax Administration Program.

(2) Except as specified in paragraph (3), for the purposes of this section, an eligible county shall mean a county in which additional property tax revenue allocated to school entities would reduce the amount of General Fund moneys apportioned to school entities. However, eligibility shall be terminated when, in combination with resources in the Educational Revenue Augmentation Fund, additional property tax revenues allocated to school entities will not result in a reduction in the General Fund apportionments.

(3) Notwithstanding paragraph (2), both the County of Solano and the County of San Benito shall be deemed eligible counties that may, upon the recommendation of the county assessor, and by resolution of the board of supervisors of the county adopted on or before March 31, 1996, elect to participate in the State-County Property Tax Administration Program.

(b) (1) In each of the 1995–96, 1996–97, and 1997–98 fiscal years, an eligible county participating in the State-County Property Tax Administration Program may receive a loan for up to the amount listed in paragraph (3). The loan shall be repaid by June 30 of the fiscal year following the year in which the loan is made. However, at the discretion of the Director of Finance, the loan may be renewed once for an additional 12-month period at the request of the participating county board of supervisors. For the Counties of Fresno, Orange, San Benito, and Solano any loan agreement signed

on or before July 31, 1996, shall be deemed a loan agreement for the 1995–96 fiscal year for the purposes of this section.

(2) If an eligible county elects to participate in the State-County Property Tax Administration Program, it shall enter into a contractual agreement with the Department of Finance. At a minimum, the contractual agreement shall include the following:

(A) The loan amount, as determined by the Director of Finance.

(B) Repayment provisions, including the interception of Motor Vehicle License Fee Account moneys apportioned pursuant to Section 11005 to repay the General Fund.

(C) A listing of the proposed use of the additional resources including, but not limited to:

(i) Proposed new positions.

(ii) Increased automation costs.

(D) An agreement to provide to the Department of Finance, by March 31 of the fiscal year in which the loan is made, a report projecting the impact of the increased funding in the current and subsequent fiscal year.

(3) Upon request of the Department of Finance, the Controller shall provide a loan to the following counties for up to the amount specified by the Director of Finance, not to exceed the following amounts:

Jurisdiction	Amount
Alameda	$ 2,152,429
Alpine	3,124
Amador	80,865
Butte	381,956
Calaveras	109,897
Colusa	53,957
Contra Costa	2,022,088
Del Norte	36,203
El Dorado	302,795
Fresno	1,165,249
Glenn	59,197
Humboldt	210,806
Imperial	231,673
Inyo	100,080
Kern	1,211,318
Kings	138,653
Lake	117,376
Lassen	54,699
Los Angeles	13,451,670
Madera	212,991

Marin	790,490
Mariposa	46,476
Mendocino	160,435
Merced	298,004
Modoc	24,022
Mono	47,778
Monterey	795,819
Napa	366,020
Nevada	234,292
Orange	6,826,325
Placer	628,047
Plumas	80,606
Riverside	2,358,068
Sacramento	1,554,245
San Benito	90,408
San Bernardino	2,139,938
San Diego	5,413,943
San Francisco	1,013,332
San Joaquin	818,686
San Luis Obispo	736,288
San Mateo	2,220,001
Santa Barbara	926,817
Santa Clara	4,213,639
Santa Cruz	565,328
Shasta	342,399
Sierra	7,383
Siskiyou	91,164
Solano	469,207
Sonoma	1,035,049
Stanislaus	866,155
Sutter	147,436
Tehama	97,222
Trinity	24,913
Tulare	501,907
Tuolumne	126,067
Ventura	1,477,789
Yolo	278,309
Yuba	88,968

(4) The Department of Finance shall consider any or all of the following items in determining the extent to which a county has

satisfied the terms and repaid the loan, pursuant to the contract, as offered under this part:

(A) County performance as indicated by the State Board of Equalization's sample survey required pursuant to Section 15640 of the Government Code.

(B) Performance measures adopted by the California Assessors' Association.

(C) Reduction of backlog of assessment appeals and Proposition 8 declines in value.

(D) County compliance with mandatory audits required by Section 469.

(E) Reduction of backlogs in new construction, changes in ownership, and supplemental roll.

(F) Other measures, as determined by the Director of Finance.

(5) The Director of Finance shall notify the Controller of any participating county that fails to comply with the terms of the agreement, including the repayment of the loan. When the Controller receives notice from the Director of Finance, the Controller shall make an apportionment to the General Fund on behalf of the participating county in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from moneys credited to the Motor Vehicle License Fee Account in the Transportation Tax Fund to which the participating county is entitled at that time under Chapter 5 (commencing with Section 11001) of Part 5 of Division 2, and shall thereupon reduce, by the amount of the payment, the subsequent allocation or allocations to which the county would otherwise be entitled under that chapter.

(c) Funds appropriated for purposes of this section shall be used to enhance the property tax administration system by providing supplemental resources. Amounts provided to any county as a loan pursuant to this section shall not be used to supplant the current level of funding. In order to participate in the State-County Property Tax Administration Program, a participating county shall maintain a base staffing, including contract staff, and total funding level in the county assessor's office, independent of the loan proceeds provided pursuant to this act, equal to the levels in the 1994–95 fiscal year exclusive of amounts provided to the assessor's office pursuant to Item 9100-102-001 of the Budget Act of 1994. However, in a county in which the 1994–95 funding level for the assessor's office was higher than the 1993–94 level, the 1993–94 fiscal year staffing and funding levels shall be considered the base year for purposes of this section.

(d) A participating county may establish a tracking system whereby a work or function number is assigned to each appraisal or administrative activity. That system should provide statistical data on the number of production units performed by each employee and the positive and negative change in assessed value attributable to the activities performed by each employee.

(e) Notwithstanding Section 95.3, no amount of funds provided to an eligible county pursuant to this section shall result in any deduction from those property tax administrative costs that are eligible for reimbursement pursuant to Section 95.3.

(f) At the request of the Department of Finance, the board shall assist the Department of Finance in evaluating contracts entered into pursuant to this section.

SEC. 14. Section 107.6 of the Revenue and Taxation Code is amended to read:

107.6. (a) The state or any local public entity of government, when entering into a written contract with a private party whereby a possessory interest subject to property taxation may be created, shall include, or cause to be included, in that contract, a statement that the property interest may be subject to property taxation if created, and that the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on the interest.

(b) Failure to comply with the requirements of this section shall not be construed to invalidate the contract. The private party may recover damages from the contracting state or local public entity, where the private party can show that without the notice, he or she had no actual knowledge of the existence of a possessory interest tax.

The private party is rebuttably presumed to have no actual knowledge of the existence of a possessory interest tax.

In order to show damages, the private party need not show that he or she would not have entered the contract but for the failure of notice.

(c) For purposes of this section:

(1) "Possessory interest" means any interest described in Section 107.

(2) "Local public entity" shall have the same meaning as that set forth in Section 900.4 of the Government Code and shall include school districts and community college districts.

(3) "State" means the state and any state agency as defined in Section 11000 of the Government Code and Section 89000 of the Education Code.

(4) "Damages" mean the amount of the possessory interest tax for the term of the contract.

SEC. 15. Section 170 of the Revenue and Taxation Code is amended to read:

170. (a) Notwithstanding any provision of law to the contrary, the board of supervisors may, by ordinance, provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for reassessment of that property as provided herein.

To be eligible for reassessment the damage or destruction to the property shall have been caused by any of the following:

(1) A major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster. As used in this paragraph, "damage" includes a diminution in the value of property as a result of restricted access to the property where that restricted access was caused by the major misfortune or calamity.

(2) A misfortune or calamity.

(3) A misfortune or calamity that, with respect to a possessory interest in land owned by the state or federal government, has caused the permit or other right to enter upon the land to be suspended or restricted. As used in this paragraph, "misfortune or calamity" includes a drought condition such as existed in this state in 1976 and 1977.

The application for reassessment may be filed within the time specified in the ordinance, or, if no time is specified, within 60 days of the misfortune or calamity, by delivering to the assessor a written application requesting reassessment showing the condition and value, if any, of the property immediately after the damage or destruction, and the dollar amount of the damage. The application shall be executed under penalty of perjury, or if executed outside the State of California, verified by affidavit.

An ordinance may be made applicable to a major misfortune or calamity specified in paragraph (1) or to any misfortune or calamity specified in paragraph (2), or to both, as the board of supervisors determines. An ordinance may not be made applicable to a misfortune or calamity specified in paragraph (3), unless an ordinance making paragraph (2) applicable is operative in the county. The ordinance may specify a period of time within which the ordinance shall be effective, and, if no period of time is specified, it shall remain in effect until repealed.

(b) Upon receiving a proper application, the assessor shall appraise the property and determine separately the full cash value of land, improvements and personalty immediately before and after the damage or destruction. If the sum of the full cash values of the land, improvements and personalty before the damage or destruction exceeds the sum of the values after the damage by five thousand dollars ($5,000) or more, the assessor shall also separately determine the percentage reductions in value of land, improvements and personalty due to the damage or destruction. The assessor shall reduce the values appearing on the assessment roll by the percentages of damage or destruction computed pursuant to this subdivision, and the taxes due on the property shall be adjusted as provided in subdivision (e). However, the amount of the reduction shall not exceed the actual loss.

(c) The assessor shall notify the applicant in writing of the amount of the proposed reassessment. The notice shall state that the

applicant may appeal the proposed reassessment to the local board of equalization within 14 days of the date of mailing the notice. If an appeal is requested within the 14-day period, the board shall hear and decide the matter as if the proposed reassessment had been entered on the roll as an assessment made outside the regular assessment period. The decision of the board regarding the damaged value of the property shall be final, provided that a decision of the local board of equalization regarding any reassessment made pursuant to this section shall create no presumption as regards the value of the affected property subsequent to the date of the damage.

Those reassessed values resulting from reductions in full cash value of amounts, as determined above, shall be forwarded to the auditor by the assessor or the clerk of the local equalization board, as the case may be. The auditor shall enter the reassessed values on the roll. After being entered on the roll, those reassessed values shall not be subject to review, except by a court of competent jurisdiction.

(d) If no application is made and the assessor determines that within the preceding six months a property has suffered damage caused by misfortune or calamity that may qualify the property owner for relief under an ordinance adopted under this section, the assessor shall provide the last known owner of the property with an application for reassessment. The property owner shall file the completed application within 30 days of notification by the assessor but in no case more than six months after the occurrence of said damage. Upon receipt of a properly completed, timely filed application, the property shall be reassessed in the same manner as required in subdivision (b).

(e) The tax rate fixed for property on the roll on which the property so reassessed appeared at the time of the misfortune or calamity, shall be applied to the amount of the reassessment as determined in accordance with this section and the assessee shall be liable for: (1) a prorated portion of the taxes that would have been due on the property for the current fiscal year had the misfortune or calamity not occurred, to be determined on the basis of the number of months in the current fiscal year prior to the misfortune or calamity; plus, (2) a proration of the tax due on the property as reassessed in its damaged or destroyed condition, to be determined on the basis of the number of months in the fiscal year after the damage or destruction, including the month in which the damage was incurred. For purposes of applying the preceding calculation in prorating supplemental taxes, the term "fiscal year" means that portion of the tax year used to determine the adjusted amount of taxes due pursuant to subdivision (b) of Section 75.41. If the damage or destruction occurred after January 1 and before the beginning of the next fiscal year, the reassessment shall be utilized to determine the tax liability for the next fiscal year. However, if the property is fully restored during the next fiscal year, taxes due for that year shall

be prorated based on the number of months in the year before and after the completion of restoration.

(f) Any tax paid in excess of the total tax due shall be refunded to the taxpayer pursuant to Chapter 5 (commencing with Section 5096) of Part 9, as an erroneously collected tax or by order of the board of supervisors without the necessity of a claim being filed pursuant to Chapter 5.

(g) The assessed value of the property in its damaged condition, as determined pursuant to subdivision (b) compounded annually by the inflation factor specified in subdivision (a) of Section 51, shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of the law require the establishment of a new base year value.

If partial reconstruction, restoration, or repair has occurred on any subsequent lien date, the taxable value shall be increased by an amount determined by multiplying the difference between its factored base year value immediately before the calamity and its assessed value in its damaged condition by the percentage of the repair, reconstruction, or restoration completed on that lien date.

(h) (1) When the property is fully repaired, restored, or reconstructed, the assessor shall make an additional assessment or assessments in accordance with subparagraph (A) or (B) upon completion of the repair, restoration, or reconstruction:

(A) If the completion of the repair, restoration, or reconstruction occurs on or after January 1, but on or before May 31, then there shall be two additional assessments. The first additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll. The second additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value to be enrolled on the roll being prepared.

(B) If the completion of the repair, restoration, or reconstruction occurs on or after June 1, but before the succeeding January 1, then the additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll.

(2) On the lien date following completion of the repair, restoration, or reconstruction, the assessor shall enroll the new taxable value of the property as of that lien date.

(3) For purposes of this subdivision, "new taxable value" shall mean the lesser of the property's (A) full cash value, or (B) factored base year value or its factored base year value as adjusted pursuant to subdivision (c) of Section 70.

(i) The assessor may apply Chapter 3.5 (commencing with Section 75) of Part 0.5 in implementing this section, to the extent that chapter is consistent with this section.

(j) This section applies to all counties, whether operating under a charter or under the general laws of this state.

(k) Any ordinance in effect pursuant to Section 155.1, 155.13, or 155.14 shall remain in effect according to its terms as if that ordinance was adopted pursuant to this section, subject to the limitations of subdivision (b).

(*l*) In lieu of subdivision (d), if no application is made and the assessor determines that within the preceding six months a property has suffered damage caused by misfortune or calamity, that may qualify the property owner for relief under an ordinance adopted under this section, the assessor may, with the approval of the board of supervisors, reassess the property as provided in subdivision (b) and notify the last known owner of the property of the reassessment.

SEC. 16. Section 201.6 is added to the Revenue and Taxation Code, to read:

201.6. (a) Subject to subdivision (b), property that is exclusively devoted to a public purpose and is owned by a nonprofit entity, the property, assets, profits, and net revenues of which are irrevocably dedicated to the Ventura Port District, shall be deemed to be property that is owned by the Ventura Port District.

(b) This section shall not be construed to exempt from ad valorem property taxation, including, but not limited to, any ad valorem property tax levied with respect to a possessory interest, either of the following:

(1) Any property owned by a profit-making organization or concessionaire.

(2) Any property of the Ventura Port District that is located outside of the boundaries of that district.

SEC. 16.5. Section 205.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 536 of the Statutes of 1995, is amended to read:

205.5. (a) Property that is owned by, and that constitutes the principal place of residence of, a veteran is exempted from taxation on that part of the full value of the residence that does not exceed forty thousand dollars ($40,000), if the veteran is blind in both eyes or has lost the use of two or more limbs as a result of injury or disease incurred in military service or that does not exceed one hundred thousand dollars ($100,000), if the veteran is totally disabled as a result of injury or disease incurred in military service. The forty thousand dollar ($40,000) exemption shall be sixty thousand dollars ($60,000), and the one hundred thousand dollar ($100,000) exemption shall be one hundred fifty thousand dollars ($150,000), in the case of an eligible veteran whose household income as defined in Section 20504 does not exceed the amounts specified in Section 20585.

(b) For purposes of this section, "veteran" means either of the following:

(1) A veteran as specified in subdivision (o) of Section 3 of Article XIII of the Constitution without regard to any limitation contained therein on the value of property owned by the veteran or the veteran's spouse.

(2) Any person who would qualify as a veteran pursuant to paragraph (1) except that he or she has, as a result of a service-connected injury or disease died while on active duty in military service. The United States Department of Veterans Affairs shall determine whether an injury or disease is service connected.

(c) (1) Property that is owned by, and that constitutes the principal place of residence of, the unmarried surviving spouse of a veteran is exempt from taxation on that part of the full value of the residence that does not exceed forty thousand dollars ($40,000), in the case of a veteran who was blind in both eyes or had lost the use of two or more limbs, or one hundred thousand dollars ($100,000), in the case of a veteran who was totally disabled provided that either of the following conditions is met:

(A) The deceased veteran during his or her lifetime qualified in all respects for the exemption or would have qualified for the exemption under the laws effective on January 1, 1977, except that the veteran died prior to January 1, 1977.

(B) The veteran died from a disease that was service connected as determined by the United States Department of Veterans Affairs.

The forty thousand dollar ($40,000) exemption shall be sixty thousand dollars ($60,000), and the one hundred thousand dollar ($100,000) exemption shall be one hundred fifty thousand dollars ($150,000), in the case of an eligible unmarried surviving spouse whose household income as specified in Section 20504 does not exceed the amounts specified in Section 20585.

(2) Commencing with the 1994–95 fiscal year, property that is owned by, and that constitutes the principal place of residence of, the unmarried surviving spouse of a veteran as described in paragraph (2) of subdivision (b) is exempt from taxation on that part of the full value of the residence that does not exceed one hundred thousand dollars ($100,000). The one hundred thousand dollar ($100,000) exemption shall be one hundred fifty thousand dollars ($150,000), in the case of an eligible unmarried surviving spouse whose household income as specified in Section 20504 does not exceed the amounts specified in Section 20585.

(d) As used in this section, "property that is owned by a veteran" or "property that is owned by the veteran's unmarried surviving spouse" includes all of the following:

(1) Property owned by the veteran with the veteran's spouse as a joint tenancy, tenancy in common or as community property.

(2) Property owned by the veteran or the veteran's spouse as separate property.

(3) Property owned with one or more other persons to the extent of the interest owned by the veteran, the veteran's spouse, or both the veteran and the veteran's spouse.

(4) Property owned by the veteran's unmarried surviving spouse with one or more other persons to the extent of the interest owned by the veteran's unmarried surviving spouse.

(5) So much of the property of a corporation as constitutes the principal place of residence of a veteran or a veteran's unmarried surviving spouse when the veteran, or the veteran's spouse, or the veteran's unmarried surviving spouse is a shareholder of the corporation and the rights of shareholding entitle one to the possession of property, legal title to which is owned by the corporation. The exemption provided by this paragraph shall be shown on the local roll and shall reduce the full value of the corporate property. Notwithstanding any provision of law or articles of incorporation or bylaws of a corporation described in this paragraph, any reduction of property taxes paid by the corporation shall reflect an equal reduction in any charges by the corporation to the person who, by reason of qualifying for the exemption, made possible the reduction for the corporation.

(e) For purposes of this section, being blind in both eyes means having a visual acuity of 5/200 or less; losing the use of a limb means that the limb has been amputated or its use has been lost by reason of ankylosis, progressive muscular dystrophies, or paralysis; and being totally disabled means that the United States Department of Veterans Affairs or the military service from which the veteran was discharged has rated the disability at 100 percent or has rated the disability compensation at 100 percent by reason of being unable to secure or follow a substantially gainful occupation.

(f) An exemption granted to a claimant in accordance with the provisions of this section shall be in lieu of the veteran's exemption provided by subdivisions (o), (p), (q), and (r) of Section 3 of Article XIII of the Constitution and any other real property tax exemption to which the claimant may be entitled. No other real property tax exemption may be granted to any other person with respect to the same residence for which an exemption has been granted under the provisions of this section; provided, that if two or more veterans qualified pursuant to this section coown a property in which they reside, each is entitled to the exemption to the extent of his or her interest.

(g) This section shall remain in effect until January 1, 2001, and on that date is repealed, unless a later enacted statute, that is chaptered on or before that date, deletes or extends that date.

SEC. 17. Section 205.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 536 of the Statutes of 1995, is amended to read:

205.5. (a) Property that is owned by, and that constitutes the principal place of residence of, a veteran is exempted from taxation on that part of the full value of the residence that does not exceed forty thousand dollars ($40,000), if the veteran is blind in both eyes, has lost the use of two or more limbs, or is totally disabled as a result of injury or disease incurred in military service. The exemption shall be sixty thousand dollars ($60,000) in the case of an eligible veteran

whose household income as defined in Section 20504 does not exceed the amounts specified in Section 20585.

(b) For purposes of this section, "veteran" means either of the following:

(1) A veteran as specified in subdivision (o) of Section 3 of Article XIII of the Constitution without regard to any residency requirement or limitation contained therein on the value of property owned by the veteran or the veteran's spouse.

(2) Any person who would qualify as a veteran pursuant to paragraph (1) except that he or she has, as a result of a service-connected injury or a disease that is service related as determined by the United States Department of Veterans Affairs, died while on active duty in military service.

(c) (1) Property that is owned by, and that constitutes the principal place of residence of, the unmarried surviving spouse of a veteran is exempt from taxation on that part of the full value of the residence that does not exceed forty thousand dollars ($40,000) provided that either of the following conditions is met:

(A) The deceased veteran during his or her lifetime qualified in all respects for the exemption or would have qualified for the exemption under the laws effective on January 1, 1977, except that the veteran died prior to January 1, 1977.

(B) The veteran died from a disease that was service connected as determined by the United States Department of Veterans Affairs.

The exemption shall be sixty thousand dollars ($60,000) in the case of an eligible unmarried surviving spouse whose household income as specified in Section 20504 does not exceed the amounts specified in Section 20585.

(2) Property that is owned by, and that constitutes the principal place of residence of, the unmarried surviving spouse of a veteran as described in paragraph (2) of subdivision (b) is exempt from taxation on that part of the full value of the residence that does not exceed forty thousand dollars ($40,000). The forty thousand dollar ($40,000) exemption shall be sixty thousand dollars ($60,000), in the case of an eligible unmarried surviving spouse whose household income as specified in Section 20504 does not exceed the amounts specified in Section 20585.

(d) As used in this section, "property that is owned by a veteran" or "property that is owned by the veteran's unmarried surviving spouse" includes all of the following:

(1) Property owned by the veteran with the veteran's spouse as a joint tenancy, tenancy in common or as community property.

(2) Property owned by the veteran or the veteran's spouse as separate property.

(3) Property owned with one or more other persons to the extent of the interest owned by the veteran, the veteran's spouse, or both the veteran and the veteran's spouse.

(4) Property owned by the veteran's unmarried surviving spouse with one or more other persons to the extent of the interest owned by the veteran's unmarried surviving spouse.

(5) So much of the property of a corporation as constitutes the principal place of residence of a veteran or a veteran's unmarried surviving spouse when the veteran, or the veteran's spouse, or the veteran's unmarried surviving spouse is a shareholder of the corporation and the rights of shareholding entitle one to the possession of property, legal title to which is owned by the corporation. The exemption provided by this paragraph shall be shown on the local roll and shall reduce the full value of the corporate property. Notwithstanding any provision of law or articles of incorporation or bylaws of a corporation described in this paragraph, any reduction of property taxes paid by the corporation shall reflect an equal reduction in any charges by the corporation to the person who, by reason of qualifying for the exemption, made possible the reduction for the corporation.

(e) For purposes of this section, being blind in both eyes means having a visual acuity of 5/200 or less; losing the use of a limb means that the limb has been amputated or its use has been lost by reason of ankylosis, progressive muscular dystrophies, or paralysis; and being totally disabled means that the United States Department of Veterans Affairs or the military service from which the veteran was discharged has rated the disability at 100 percent or has rated the disability compensation at 100 percent by reason of being unable to secure or follow a substantially gainful occupation.

(f) An exemption granted to a claimant in accordance with the provisions of this section shall be in lieu of the veteran's exemption provided by subdivisions (o), (p), (q), and (r) of Section 3 of Article XIII of the Constitution and any other real property tax exemption to which the claimant may be entitled. No other real property tax exemption may be granted to any other person with respect to the same residence for which an exemption has been granted under the provisions of this section; provided, that if two or more veterans qualified pursuant to this section coown a property in which they reside, each is entitled to the exemption to the extent of his or her interest.

(g) This section shall become operative on January 1, 2001.

SEC. 18. Section 401.5 of the Revenue and Taxation Code is amended to read:

401.5. The board shall issue to assessors data relating to costs of property, or, with respect to commercial and industrial property, shall, after a public hearing, review and approve commercially available data, and shall issue to assessors other information as in the judgment of the board will promote uniformity in appraisal practices and in assessed values throughout the state. An assessor shall adapt data received pursuant to this section to local conditions and may

consider that data together with other factors as required by law in the assessment of property for tax purposes.

SEC. 19. Section 401.9 is added to the Revenue and Taxation Code, to read:

401.9. (a) Contracts entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code) and recorded between January 1, 1997, and February 28, 1997, inclusive, shall be deemed timely for purposes of inclusion on the January 1, 1997, property tax roll.

(b) Land zoned as "timberland" pursuant to Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5 of the Government Code between January 1, 1997, and February 28, 1997, inclusive, shall be deemed timely for purposes of inclusion on the January 1, 1997, property tax roll.

SEC. 19.5. Section 439.2 of the Revenue and Taxation Code is amended to read:

439.2. When valuing enforceably restricted historical property, the county assessor shall not consider sales data on similar property, whether or not enforceably restricted, and shall value that restricted historical property 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 that can be imputed to the restricted historical property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use where the owner pays the property tax. When the restricted historical property being valued is actually encumbered by a lease, any cash rent or its equivalent considered in determining the fair rent of the property shall be the amount for which the property would be expected to rent were the rental payment to be renegotiated in the light of current conditions, including applicable provisions under which the property is enforceably restricted.

(2) Where sufficient rental information is not available, the income shall be that which the restricted historical property being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the property is enforceably restricted.

(3) If the parties to an instrument that enforceably restricts the property stipulate therein an amount that constitutes the minimum annual income to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated.

For 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, that the property can be expected to yield to an owner-operator annually on the average from any use of the property permitted under the terms by which the property is enforceably restricted.

Expenditures shall be any outlay or average annual allocation of money or money's worth that can be fairly charged against the revenue expected to be received during the period used in computing the 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 property, property taxes, corporation income taxes, or corporation franchise taxes based on income.

(b) The capitalization rate to be used in valuing owner-occupied single family dwellings 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 and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board, rounded to the nearest $^1/_4$ percent.

(2) A historical property risk component of 4 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(c) The capitalization rate to be used in valuing all other restricted historical property 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 and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board, rounded to the nearest $^1/_4$ percent.

(2) A historical property risk component of 2 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(d) Unless a party to an instrument that creates an enforceable restriction expressly prohibits the 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.

(e) The value of the restricted historical property shall be the quotient of the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b) or (c).

(f) The ratio prescribed in Section 401 shall be applied to the value of the property determined in subdivision (d) to obtain its assessed value.

SEC. 20. Section 441 of the Revenue and Taxation Code is amended to read:

441. Each person owning taxable personal property, other than a mobilehome subject to Part 13 (commencing with Section 5800), having an aggregate cost of one hundred thousand dollars ($100,000) or more for any assessment year shall file a signed property statement with the assessor. Every person owning personal property which does not require the filing of a property statement or real property shall upon request of the assessor file a signed property statement. Failure of the assessor to request or secure the property statement does not render any assessment invalid.

(a) The property statement shall be declared to be true under the penalty of perjury and filed with the assessor between the lien date and 5 p.m. on the last Friday in May, annually, or between the lien date and any earlier time as the assessor may appoint.

(b) If the assessor appoints a time other than the last Friday in May, it shall be no earlier than April 1. In this event the penalty provided by Section 463 shall apply if the property statement is not filed with the assessor by 5 p.m. on the last Friday in May or if all of the following apply:

(1) The property statement is not filed within the time appointed by the assessor.

(2) The assessor has given notice by certified or registered mail, or by first-class mail, properly addressed with postage prepaid, no earlier than 15 days after the time appointed by the assessor of nonreceipt of the property statement within the appointed time. If the notice is given by first-class mail, the assessor shall obtain a certificate of mailing issued by the United States Postal Service verifying the fact and date of mailing of the notice.

(3) The property statement has not been filed with the assessor within 15 days following the date of receipt of the notice, if the notice is given by certified or registered mail, or within 20 days following the date shown on the certificate of mailing, if the notice is given by first-class mail.

(c) The property statement may be filed with the assessor through the United States mail, properly addressed with postage prepaid. This subdivision shall be applicable to every taxing agency, including, but not limited to, a chartered city and county, or chartered city.

(d) At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties.

(e) In the case of a corporate owner of property, the property statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign the statements on behalf of the corporation.

(f) In the case of property owned by a bank or other financial institution and leased to an entity other than a bank or other financial institution, the property statement shall be submitted by the owner bank or other financial institution.

(g) The assessor may refuse to accept any property statement he or she determines to be in error.

(h) If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor 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 the continuance.

SEC. 21. Section 503 of the Revenue and Taxation Code is amended to read:

503. If any taxpayer or the taxpayer's agent through a fraudulent act or omission causes, or if any fraudulent collusion between the taxpayer or the taxpayer's agent and the assessor or any of the assessor's deputies causes, any taxable tangible property to escape assessment in whole or in part, or to be underassessed, the assessor shall assess the property in the lawful amount and add a penalty of 75 percent of the additional assessed value so assessed.

SEC. 22. Section 504 of the Revenue and Taxation Code is amended to read:

504. There shall be added to any assessment made pursuant to Section 502, except those assessments as are placed on the current roll prior to the time it is originally completed and published, a penalty of 25 percent of the additional assessed value so assessed.

SEC. 23. Section 1624.4 of the Revenue and Taxation Code is amended to read:

1624.4. (a) The party affected by an equalization proceeding or his or her agent, or the assessor, may make and file with the clerk of the assessment appeals board in which the proceeding is pending a written statement objecting to the hearing of a matter before a member of the board, and setting forth the facts constituting the

ground of the disqualification of the member. Copies of the written statement shall be served by the presenting party on each party in the proceeding and on the board member alleged in the statement to be disqualified.

(b) Within 10 days after the filing of the statement, or within 10 days after the service of the statement as provided in subdivision (a), whichever is later, the board member alleged therein to be disqualified may file with the clerk his or her consent in writing that the action or proceeding be tried before another member, or may file with the clerk his or her written answer admitting or denying any or all of the allegations contained in the statement and setting forth any additional fact or facts material or relevant to the question of his or her disqualification. The clerk shall transmit a copy of the member's consent or answer to each party who shall have appeared in the proceeding. Every statement and every answer shall be verified by oath in the manner prescribed by Section 446 of the Code of Civil Procedure for the verification of pleadings. The statement of a party objecting to the member on the ground of the member's disqualification, shall be presented at the earliest practicable opportunity, after discovery of the facts constituting the ground of the member's disqualification, and in any event before the commencement of the hearing of any issue of fact in the proceeding before the member.

(c) No member of the board, who shall deny his or her own disqualification, shall hear or pass upon the question of the disqualification. The question of the member's disqualification shall be heard and determined by some other member agreed upon by the parties who have appeared in the proceeding, or, in the event of their failing to agree, by a member assigned to act by the clerk. Within five days after the expiration of the time allowed by this section for the member to answer, the clerk shall assign a member, not disqualified, to hear and determine the matter of the disqualification.

SEC. 23.5. Section 4831 of the Revenue and Taxation Code is amended to read:

4831. (a) Any error resulting in incorrect entries on the roll may be corrected under this article. The correction may be made at any time after the roll is delivered to the auditor but, except as provided in subdivision (b), shall be made within four years after the making of the assessment that is being corrected. This section does not apply to either of the following:

(1) Except as provided in subdivision (b), errors involving the exercise of value judgments.

(2) Escape assessments caused by the assessee's failure to report the information required by Article 2 (commencing with Section 441) of Chapter 3 of Part 2.

If any error referred to in this subdivision is discovered as the result of an audit of a taxpayer's books and records, that error may be

corrected at any time prior to the expiration of six months after the completion of the audit.

(b) Any error or omission involving the exercise of a value judgment that arises solely from a failure to reflect a decline in the taxable value of real property as required by paragraph (2) of subdivision (a) of Section 51 shall be corrected within one year after the making of the assessment that is being corrected.

(c) Taxes that are not a lien or charge on the property assessed may be transferred from the secured roll to the unsecured roll of the corresponding year by the county auditor. These taxes shall be collected in the same manner as other delinquent taxes on the unsecured roll and shall be subject to delinquent penalties in the same manner as taxes transferred to the unsecured roll under Section 5090. The statute of limitations for the collection of those taxes shall commence to run from the date of transfer.

SEC. 24. Section 5364 of the Revenue and Taxation Code is amended to read:

5364. The board shall establish standards and fix guides or, after a public hearing, shall review and approve commercially available guides, to be used by the county assessor in the assessment of aircraft at market value.

SEC. 25. Section 6456 of the Revenue and Taxation Code is amended to read:

6456. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that

is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a retailer of taxable items to which the understatement is attributable. If neither spouse rendered substantial services as a retailer, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

SEC. 26. Section 6479.3 of the Revenue and Taxation Code is amended to read:

6479.3. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board. Any person who collects use tax on a voluntary basis is not required to remit amounts due by electronic funds transfer.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars ($20,000) per month or any person who voluntarily collects use tax may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 6451) and Article 1.1 (commencing with Section 6470). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who is required to remit taxes pursuant to this article, who fails to timely remit those taxes, and who is issued a deficiency determination pursuant to Section 6481 with respect to those taxes, shall, in addition to any other penalties imposed, pay a 10 percent penalty of the amount of those taxes.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars ($20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 27. Section 6480.1 of the Revenue and Taxation Code is amended to read:

6480.1. (a) After service of written notification by the board, on the first distribution in this state of motor vehicle fuel subject to the motor vehicle fuel license tax, the distributor shall collect prepayment of retail sales tax from the person to whom the motor vehicle fuel is distributed. The prepayment required to be collected by the distributor constitutes a debt owed by the distributor to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a distributor or broker who has consumed the fuel has paid the use tax to the board. Each distributor shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is distributed. On each subsequent distribution of that motor vehicle fuel, each seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of distribution. Each distributor shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon.

(b) After service of written notification by the board, the broker shall collect prepayment of the retail sales tax from the person to whom the motor vehicle fuel is transferred. The prepayment required to be collected by the broker constitutes a debt owed by the broker to the state until paid to the board, or until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the tax to the board. Each broker shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon.

Each broker shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is distributed. The amount of prepayment paid by the broker to his or her vendor shall constitute a credit against the amount of prepayment required to be collected and remitted by the broker to the board.

(c) A distributor or broker who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the fuel, shall be entitled to a credit against his or her sales and use taxes due and payable for the period in which the prepayment was made, provided that he or she reports and pays the use tax to the board on the consumption of that fuel.

(d) The amount of a prepayment paid by the retailer or a distributor or broker who has consumed the fuel to the seller from whom he or she acquired the fuel shall constitute a credit against his or her sales and use taxes due and payable for the period in which the distribution was made. Failure of the distributor or broker to report prepayments or the distributor's or broker's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, distributor, or broker, either on a temporary or permanent basis or otherwise. The retailer, distributor, or broker shall be entitled to the credit to the extent of the amount prepaid to his or her supplier as evidenced by purchase documents, invoices, or receipts stating separately the amount of tax prepayment.

(e) The rate of the prepayment required to be collected during the period from July 1, 1986, through March 31, 1987, shall be four cents ($0.04) per gallon of motor vehicle fuel distributed or transferred.

(f) On April 1 of each succeeding year, the rate per gallon, rounded to the nearest one-half of one cent, of the required prepayment shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, and 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales tax) as determined by the State Energy Resources Conservation and Development Commission, in its latest publication of the "Quarterly Oil Report," of all grades of gasoline sold through a self-service gasoline station. In the event the "Quarterly Oil Report" is delayed or discontinued, the board may base its determination on other sources of the arithmetic average selling price of gasoline. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every distributor, broker, and retailer of motor vehicle fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments which consistently exceed or are

significantly lower than the retailers' sales tax liability, the board may readjust the rate.

SEC. 27.5. Section 6480.1 of the Revenue and Taxation Code is amended to read:

6480.1. (a) After service of written notification by the board, on the first distribution in this state of motor vehicle fuel subject to the motor vehicle fuel license tax, the distributor shall collect prepayment of retail sales tax from the person to whom the motor vehicle fuel is distributed. The prepayment required to be collected by the distributor constitutes a debt owed by the distributor to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a distributor or broker who has consumed the fuel has paid the use tax to the board. Each distributor shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is distributed. On each subsequent distribution of that motor vehicle fuel, each seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of distribution. Each distributor shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon.

(b) (1) After service of written notification by the board, the broker shall collect prepayment of the retail sales tax from the person to whom the motor vehicle fuel is transferred. The prepayment required to be collected by the broker constitutes a debt owed by the broker to the state until paid to the board, or until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the tax to the board. Each broker shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon.

(2) Each broker shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is distributed. The amount of prepayment paid by the broker to his or her vendor shall constitute a credit against the amount of prepayment required to be collected and remitted by the broker to the board.

(c) A distributor or broker who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the fuel, shall be entitled to a credit against his or her sales and use taxes due and payable for the period in which the prepayment was made, provided that he or she reports and pays the use tax to the board on the consumption of that fuel.

(d) The amount of a prepayment paid by the retailer or a distributor or broker who has consumed the fuel to the seller from whom he or she acquired the fuel shall constitute a credit against his or her sales and use taxes due and payable for the period in which the distribution was made. Failure of the distributor or broker to report

prepayments or the distributor's or broker's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, distributor, or broker, either on a temporary or permanent basis or otherwise. The retailer, distributor, or broker shall be entitled to the credit to the extent of the amount prepaid to his or her supplier as evidenced by purchase documents, invoices, or receipts stating separately the amount of tax prepayment.

(e) The rate of the prepayment required to be collected during the period from July 1, 1986, through March 31, 1987, shall be four cents ($0.04) per gallon of motor vehicle fuel distributed or transferred.

(f) On April 1 of each succeeding year, the rate per gallon, rounded to the nearest one-half of one cent, of the required prepayment shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, and 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales tax) as determined by the Department of Energy and Conservation, in its latest publication of the "Quarterly Oil Report," of all grades of gasoline sold through a self-service gasoline station. In the event the "Quarterly Oil Report" is delayed or discontinued, the board may base its determination on other sources of the arithmetic average selling price of gasoline. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every distributor, broker, and retailer of motor vehicle fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments which consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

SEC. 28. Section 6480.10 of the Revenue and Taxation Code is amended to read:

6480.10. (a) For purposes of this article, the terms "motor vehicle," "fuel," "person," and "in this state" are defined pursuant to Part 3 (commencing with Section 8601), except as provided in subdivisions (b) and (c).

(b) For purposes of this article, "fuel" does not include liquefied petroleum gas, compressed natural gas, liquid natural gas, and methanol and ethanol containing not more than 15 percent gasoline or diesel fuels.

(c) For purposes of this article, "fuel" includes "aircraft jet fuel" as that term is defined by Section 7372, and "diesel fuel" as that term is defined by Section 60022.

SEC. 29. Section 6591 of the Revenue and Taxation Code is amended to read:

6591. (a) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 6481) or Article 3 (commencing with Section 6511) of this chapter, within the time required shall pay a penalty of 10 percent of the tax or amount of the tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

(b) Any person who fails to file a return in accordance with the due date set forth in Section 6451 or the due date established by the board in accordance with Section 6455, shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the taxes for which the return is required, exclusive of any prepayments, for any one return.

SEC. 30. Section 6701 of the Revenue and Taxation Code is amended to read:

6701. The board, whenever it deems it necessary to ensure compliance with this part, may require any person subject thereto, to place with it any security that the board may determine. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the board in trust to be used solely in the manner provided by this section and Section 6815. The amount of the security shall be fixed by the board but, except as noted below, shall not be greater than twice the estimated average liability of persons filing returns for quarterly periods or three times the estimated average liability of persons required to file returns for monthly periods, determined in the manner that the board deems proper, or fifty thousand dollars ($50,000), whichever amount is the lesser. In case of a person who, pursuant to Section 6070 of this part, has been given notice of hearing to show cause why his or her permit or permits should not be revoked, or a person whose permit or permits has been revoked or suspended, the amount of the security shall not be greater than three times the average liability of persons filing returns for quarterly periods or five times the average liability of persons required to file returns for monthly periods, or fifty thousand dollars ($50,000), whichever amount is the lesser. The limitations herein provided apply regardless of the type of security placed with the board. The amount of the security may be increased or decreased by the board subject to the limitations herein provided. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required. The board

may sell the security at public auction if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest, or penalty due. Notice of the sale may be served upon the person who placed the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at his or her address as it appears in the records of the board. Upon any sale any surplus above the amounts due shall be returned to the person who placed the security.

SEC. 31. Section 6902.3 is added to the Revenue and Taxation Code, to read:

6902.3. Notwithstanding of Section 6902, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

SEC. 32. Section 8127.5 is added to the Revenue and Taxation Code, to read:

8127.5. When an amount represented by a person who is a taxpayer under this part to a customer as constituting reimbursement for taxes due under this part is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not taxable or is in excess of the taxable amount, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the Controller on any amounts due and payable under this part on the same transaction from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

SEC. 33. Section 8708 of the Revenue and Taxation Code is amended to read:

8708. The board or its authorized representative may issue a California fuel trip permit to interstate users and holders of trip permits issued under Section 4004 of the Vehicle Code. The California fuel trip permit shall be valid for the same period as the trip permit issued under Section 4004 of the Vehicle Code. The fee for issuance of a California fuel trip permit is thirty dollars ($30). Other provisions of this article and Article 1 (commencing with Section 8751) of Chapter 4 do not apply to the holder of a California fuel trip permit who uses only fuel brought into this state in the fuel tank of a qualified motor vehicle and fuel purchased from, and delivered into the fuel tank of the qualified motor vehicle by, a vendor. Any use fuel tax paid to a vendor for fuel taken out of the state in the fuel tank of a qualified motor vehicle operated under a

California fuel trip permit shall not be refunded to the holder of the permit, notwithstanding any other provisions of this part.

The board may deny the issuance of more than one California fuel trip permit for an interstate user of fuel determined by the board to bring qualified motor vehicles into this state on a regular, ongoing basis. The board shall maintain a file of all California fuel trip permits issued under this section for the purpose of determining the effectiveness of the program and the appropriateness of the fee. The board may enter into an interagency agreement with the Department of Motor Vehicles providing for the issuance of California fuel trip permits by that department.

SEC. 34. Section 8876 of the Revenue and Taxation Code is amended to read:

8876. Any user who fails to pay any tax, except taxes determined by the board under Article 2 (commencing with Section 8776) or Article 3 (commencing with Section 8801), within the time required shall pay a penalty of 10 percent of the amount of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable until the date of payment.

SEC. 35. Section 9151.5 is added to the Revenue and Taxation Code, to read:

9151.5. When an amount represented by a person who is a taxpayer under this part to a customer as constituting reimbursement for taxes due under this part is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not taxable or is in excess of the taxable amount, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same transaction from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

SEC. 36. Section 9154 of the Revenue and Taxation Code is repealed.

SEC. 37. Section 11319 of the Revenue and Taxation Code is amended to read:

11319. If any assessment made pursuant to this article results in a tax that is paid after December 10 of the year to which the assessment relates, the tax shall bear interest at the adjusted annual rate established pursuant to Section 19521 from December 10 of the year in which the assessment should have been made to the date the assessment is added to the board roll; provided, however, that no

addition shall be made whenever the escape was due to an error, other than an erroneous opinion of value, on the part of the board.

SEC. 38. Section 11354 of the Revenue and Taxation Code is amended to read:

11354. A jeopardy assessment is delinquent at the time it becomes final, and if unpaid at this time, a penalty of 10 percent of the tax shall be added thereto, plus interest on the amount of tax at the adjusted annual rate established pursuant to Section 19521 from the date on which the tax becomes due and payable until the date of payment.

SEC. 39. Section 11405 of the Revenue and Taxation Code is amended to read:

11405. If the tax is not paid on or before December 10th following the levy of the tax, a penalty of 10 percent of the amount of the tax shall be added thereto plus interest on the amount of the tax at the adjusted annual rate established pursuant to Section 19521 from December 10th until the date of payment.

SEC. 40. Section 11430 of the Revenue and Taxation Code is amended to read:

11430. If the additional tax is not paid within the time specified in Section 11429, it is delinquent and a penalty of 10 percent of the amount of the additional tax shall be added thereto, plus interest on the amount of the additional tax at the adjusted annual rate established pursuant to Section 19521 from the date on which the additional tax became due and payable until the time of payment.

SEC. 41. Section 11555 of the Revenue and Taxation Code is amended to read:

11555. Interest shall be paid upon the amount of any overpayment of tax at the adjusted annual rate established pursuant to Section 19521 upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the overpayment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board from the first day of the month following the month the tax becomes due. The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 42. Section 11576 of the Revenue and Taxation Code is amended to read:

11576. In any judgment, interest shall be allowed at the adjusted annual rate established pursuant to Section 19521 upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment

or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

SEC. 43. Section 30266 is added to the Revenue and Taxation Code, to read:

30266. The board may decrease or increase the amount of the determination before it becomes final, but may increase the amount of the determination only if a claim for increase is asserted by the board at or before the hearing. Unless the 25 percent penalty imposed by Section 30205 or 30224 applies to the amount of the determination as originally made or as increased, the claim for increase shall be asserted within eight years after the date the return for the period for which the increase is asserted is due.

SEC. 44. Section 30473.5 is added to the Revenue and Taxation Code, to read:

30473.5. Any person who possesses, sells, or offers to sell, or buys or offers to buy, any false or fraudulent stamps or meter impressions provided for or authorized under this part with a tax value greater than seven hundred fifty dollars ($750) is guilty of a misdemeanor.

SEC. 45. Section 32102 of the Revenue and Taxation Code is amended to read:

32102. The board, whenever it deems it necessary to ensure compliance with this part, may require any person subject thereto, to place with it that security as the board may determine, in the form and amount as the board prescribes. Any security in the form of cash, insured deposits in banks and savings and loan institutions, or a bond or bonds duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all the requirements of this part, and expressly providing for the payment of all license taxes, penalties, and other obligations of the person arising out of this part, shall be held in trust to be used solely in the manner provided by this section.

SEC. 46. Section 32291 of the Revenue and Taxation Code is amended to read:

32291. If any taxpayer fails to make a return required by this part, the board shall make an estimate, based upon any information available to it, for the period or periods with respect to which the taxpayer failed to make a return of all alcoholic beverages sold in this state by him or her. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state, adding to the sum thus fixed a penalty equal to 10 percent thereof. One or more determinations may be made of the amount of tax due for one or for more than one period. The amount of tax so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the 15th day of the month following the close of the period for which the amount of the tax, or any portion thereof, should have been returned until the date of payment. In making a determination the board may offset overpayments for a period or periods against underpayments

for another period or periods and against interest and penalties on the underpayments. If any part of the deficiency for which a determination is made is due to negligence or intentional disregard of this part or authorized rules, an additional penalty of 10 percent of the amount of the determination shall be added. If the neglect or refusal of a taxpayer to file a return as required by this part was due to fraud or an intent to evade the tax, there shall be added to the tax a penalty equal to 25 percent thereof in addition to the 10 percent penalty. The board shall give to the taxpayer written notice of the estimate and determination, the notice to be served personally or by mail in the same manner as prescribed for service of notice by Section 32271.

SEC. 47. Section 32457 is added to the Revenue and Taxation Code, to read:

32457. Notwithstanding Section 15619 of the Government Code, all information contained in the Vendor's Report of Beer Shipments into California may be made public.

SEC. 47.5. Section 32557 is added to the Revenue and Taxation Code, to read:

32557. Any person who knowingly possesses, keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any container or containers of alcoholic beverage with a tax value greater than five hundred dollars ($500) where the taxes imposed under this part have not been paid is guilty of a misdemeanor.

SEC. 48. Section 38405 of the Revenue and Taxation Code is amended to read:

38405. The board for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the adjusted annual rate established pursuant to Section 19521 from the date on which the tax would have been due without the extension until the date of payment.

SEC. 49. Section 38412 of the Revenue and Taxation Code is amended to read:

38412. The amount of the determination, exclusive of penalties, shall bear interest at the adjusted annual rate established pursuant to Section 19521 from the last day of the month following the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

SEC. 50. Section 38423 of the Revenue and Taxation Code is amended to read:

38423. The amount of the determination, exclusive of penalties, shall bear interest at the adjusted annual rate established pursuant to Section 19521 from the last day of the month following the quarterly

period for which the amount or any portion thereof should have been returned until the date of payment.

SEC. 51. Section 38451 of the Revenue and Taxation Code is amended to read:

38451. Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Articles 2 or 3 of this chapter, within the time required shall pay a penalty of 10 percent of the tax or amount of the tax, in addition to the tax or the amount of tax, plus interest at the adjusted annual rate established pursuant to Section 19521 from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

SEC. 52. Section 38606 of the Revenue and Taxation Code is amended to read:

38606. Interest shall be paid upon any overpayment of any amount of tax at the adjusted annual rate established pursuant to Section 19521 from the last day of the calendar month following the quarterly period for which the overpayment was made; but no refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 53. Section 38616 of the Revenue and Taxation Code is amended to read:

38616. In any judgment, interest shall be allowed at the adjusted annual rate established pursuant to Section 19521 upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

SEC. 54. Section 40102 of the Revenue and Taxation Code is amended to read:

40102. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 40081, 40096, and 40101.

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. 55. Section 41052.1 is added to the Revenue and Taxation Code, to read:

41052.1. If it deems it necessary in order to ensure payment or to facilitate the collection by the state of the amount of taxes, the board may require returns and payment of the amount of taxes for quarterly periods other than calendar quarters, or for multiples of quarterly periods.

SEC. 56. Section 41052.1 is added to the Revenue and Taxation Code, to read:

41052.1. The board, if it deems it necessary in order to insure payment to, or facilitate collection by, the state of the amount of taxes, may require returns and payment of the amount of taxes for monthly periods other than calendar monthly periods, but not less than a calendar monthly period.

SEC. 57. Section 43451.5 is added to the Revenue and Taxation Code, to read:

43451.5. When an amount represented by a person who is a feepayer under this part to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same activity from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

SEC. 58. Section 45651 of the Revenue and Taxation Code is amended to read:

45651. If the board determines that any amount of fee, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records and certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of

fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 59. Section 45651.5 of the Revenue and Taxation Code is amended to read:

45651.5. Except as provided in Section 48008 of the Public Resources Code, when an amount represented by a person who is a feepayer under this part to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to the State Board of Equalization. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same solid waste from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

SEC. 60. Section 45655 of the Revenue and Taxation Code is amended to read:

45655. Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the monthly period following the period for which the overpayment was made. For purposes of this section, "monthly period" means the month commencing on the day after the due date of the payment through the same date as the due date in each successive month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the monthly period following the date upon which the claimant is notified by the board that a claim may be filed.

(b) In the case of a credit, to the same date as that to which interest is computed on the fee or amount against which the credit is applied.

SEC. 61. Section 46501.5 is added to the Revenue and Taxation Code, to read:

46501.5. When an amount represented by a person who is a feepayer under this part to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer

that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same activity from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

SEC. 62. Section 50139.5 is added to the Revenue and Taxation Code, to read:

50139.5. When an amount represented by a person who is a feepayer under this part to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same activity from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

SEC. 63. Section 55221.5 is added to the Revenue and Taxation Code, to read:

55221.5. When an amount represented by a feepayer subject to this part to a customer as constituting reimbursement for fees subject to this part is computed upon an amount that is not taxable or is in excess of the fee amount and is actually paid by the customer to the feepayer, the amount so paid shall be returned by the feepayer to the customer upon notification by the State Board of Equalization or the customer that the excess has been ascertained. If the feepayer fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the feepayer upon an amount that is not subject to the fee or is in excess of the fee amount, shall be remitted by that feepayer to this state. Those amounts remitted to the state by the feepayer shall be credited by the board on any amounts due and payable from the feepayer which are subject to this part and are based on the same activity, and the balance, if any, shall constitute an obligation due from the feepayer to this state.

SEC. 64. Section 55225 of the Revenue and Taxation Code is amended to read:

55225. Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the monthly period following the period during which the overpayment

was made. For purposes of this section, "monthly period" means the period commencing on the day after the due date of the payment and continuing through the same date in the immediately following month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the monthly period following the date upon which the claimant is notified by the board that a claim may be filed.

(b) In the case of a credit, to the same date as to that to which interest is computed on the fee or amount against which the credit is applied.

SEC. 65. Section 55330 of the Revenue and Taxation Code is amended to read:

55330. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fees and expenses with the board.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, which shall be determined by the board.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the taxpayer has established that the position of the board staff was not substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was found unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

SEC. 66. Section 60045 is added to the Revenue and Taxation Code, to read:

60045. "Intercity bus" means a bus used to furnish, for compensation, passenger land transportation that is available to the general public, in the case in which either of these conditions is met:

(a) The transportation is scheduled and along regular or irregular routes.

(b) The seating capacity of the bus is at least 20 adults, not including the driver.

For purposes of this section, passenger land transportation is available to the general public if the bus is available for hire to more than a limited number of persons, groups, or organizations.

SEC. 67. Section 60046 is added to the Revenue and Taxation Code, to read:

60046. "Intercity bus operator" includes any person that owns, operates, or controls an intercity bus, as defined in Section 60045.

SEC. 68. Section 60101 of the Revenue and Taxation Code is amended to read:

60101. (a) Diesel fuel that is required to be dyed satisfies the dyeing requirement of this part if it meets the dyeing requirements of the United States Environmental Protection Agency and the Internal Revenue Service, including, but not limited to, requirements respecting type, dosage, and timing.

(b) Marking shall meet the marking requirements of the Internal Revenue Service.

(c) No person shall operate or maintain a motor vehicle on any public highway in this state with dyed diesel fuel in the fuel supply tank. This subdivision does not apply to uses of dyed diesel fuel on the highway that are lawful under the Internal Revenue Code or regulations promulgated thereunder, if the person is registered as a highway vehicle operator, exempt bus operator, or government entity, or if the person is an intercity bus operator, as defined in Section 60046, who is registered as an interstate user under this part.

SEC. 69. Section 60122 of the Revenue and Taxation Code is amended to read:

60122. The board or its authorized representative may issue a California fuel trip permit to interstate users and holders of trip permits issued under Section 4004 of the Vehicle Code. The California fuel trip permit shall be valid for the same period as the trip permit issued under Section 4004 of the Vehicle Code. The fee for issuance of a California fuel trip permit is thirty dollars ($30). Other provisions of this article and Article 1 (commencing with Section 60201) of Chapter 6 shall not apply to the holder of a California fuel trip permit who uses only diesel fuel brought into this state in the fuel tank of the qualified motor vehicle and diesel fuel purchased in this state with the diesel fuel tax paid and delivered into the fuel tank of the qualified motor vehicle. Any diesel fuel tax paid to a diesel vendor for diesel fuel taken out of the state in the fuel tank of a qualified motor vehicle operated under a California fuel trip permit shall not be refunded to the holder of the California fuel trip permit, notwithstanding any other provision of this part.

The board may deny the issuance of more than one California fuel trip permit for any interstate user determined by the board to bring vehicles into this state on a regular, ongoing basis. The board shall maintain a file of all permits issued under this section for the purpose of determining the effectiveness of the program and the appropriateness of the fee. The board may enter into an interagency

agreement with the Department of Motor Vehicles providing for the issuance of California fuel trip permits by that department.

SEC. 70. Section 60207 of the Revenue and Taxation Code is amended to read:

60207. Any person who fails to pay the amount of tax shown to be due by that person's return on or before the last day of the month following the reporting period to which it relates, shall pay a penalty of 10 percent of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

SEC. 71. Section 60521.5 is added to the Revenue and Taxation Code, to read:

60521.5. When an amount represented by a person who is a taxpayer under this part to a customer as constituting reimbursement for taxes due under this part is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not taxable or is in excess of the taxable amount, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same transaction from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

SEC. 72. Section 60632 of the Revenue and Taxation Code is amended to read:

60632. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part, or within 90 days from the receipt of the funds pursuant to a levy or notice to withhold may order the return of any amount up to one thousand five hundred dollars ($1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse or dependents.

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

SEC. 73. The Legislature finds and declares with respect to Section 16 of this act that a special law is necessary and that a general

law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique ambiguity that would otherwise exist with respect to the proper property tax treatment of certain property owned by a nonprofit entity that may be properly characterized as the agent of the Ventura Port District.

SEC. 74. Section 1.5 of this bill incorporates amendments to Section 7480 of the Government 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 7480 of the Government Code, and (3) this bill is enacted after AB 3351, in which case Section 7480 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 1.5 of this bill shall become operative.

SEC. 75. Section 9.5 of this bill incorporates amendments to Section 62 of the Revenue and Taxation Code proposed by both this bill, SB 44, and SB 494. It shall only become operative if (1) this bill and SB 44 or SB 494, or both, are enacted and become effective January 1, 1997, (2) each bill amends Section 62 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 44 or SB 494, or both, in which case Section 9 of this bill shall not become operative.

SEC. 76. Section 27.5 of this bill incorporates amendments to Section 6480.1 of the Revenue and Taxation Code proposed by both this bill and SB 956. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section 6480.1 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 956, in which case Section 27 of this bill shall not become operative.

SEC. 77. Section 56 of this act shall become operative only if Assembly Bill 3204 is chaptered and adds Section 41052.1 to the Revenue and Taxation Code, in which event Section 55 of this act shall not become operative.

SEC. 78. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any revenue lost by it pursuant to Section 10 of this act.

SEC. 79. No reimbursement is required by Sections 44 and 47.5 of 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 1088

An act to amend Sections 44010.5, 44014.5, 44015, 44033, 44081, and 44103 of, and to add Sections 44000.5, 44014.2, 44014.4, and 44037.2 to, the Health and Safety Code, and to amend Section 3016 of the Vehicle Code, relating to air pollution, 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. Section 44000.5 is added to the Health and Safety Code, to read:

44000.5. (a) The Legislature further finds and declares that the motor vehicle inspection and maintenance program implemented under this chapter has, since 1984, provided beneficial emission reductions without undue inconvenience to California vehicle owners, and vehicle owners will benefit from the maintenance by the state of a substantially decentralized program giving them a choice among thousands of independent licensed stations able to perform both inspection and repair of vehicles.

(b) With the enactment of this chapter, the Legislature does not intend to create a statutory presumption that any motor vehicle, solely by virtue of make, model, or year of manufacture, shall be classified or categorized as a "gross polluter" or a "gross polluting vehicle."

(c) (1) With the enactment of this chapter, the Legislature does not intend to place an unreasonable burden on fleet vehicles with respect to compliance with smog inspection and maintenance regulations.

(2) Fleet vehicles shall not be included in the certification requirements established pursuant to Section 44014.7.

SEC. 2. Section 44010.5 of the Health and Safety Code is amended to read:

44010.5. (a) The department shall implement a program with the capacity to commence, by January 1, 1995, the testing at test-only facilities, in accordance with this chapter, of 15 percent of that portion of the total state vehicle fleet consisting of vehicles subject to inspection each year in the biennial program and that are registered in the enhanced program area, as established pursuant to paragraph (1) of subdivision (a) of Section 44003.

(b) (1) The department shall increase the capacity of the program so that the capacity exists to commence, by January 1, 1996, the testing at test-only facilities of that portion of the state vehicle fleet that is subject to inspection and is registered in the enhanced program area, which is sufficient to meet the emission reduction performance standards established by the Environmental Protection Agency in regulations adopted pursuant to the Clean Air Act Amendments of 1990, taking into account the results of the pilot demonstration program established pursuant to Section 44081.6.

(2) Upon increasing the capacity of the program pursuant to paragraph (1), the department shall afford smog check stations that are licensed and certified pursuant to Sections 44014 and 44014.2 the initial opportunity to perform the required inspections. The department shall adopt, by regulation, the requirements to provide that initial opportunity.

(3) If the department determines that there is an insufficient number of licensed test-only smog check stations operating in an enhanced area to meet the increased demand for test-only inspections, the department may increase the capacity of the program by utilizing existing contracts.

(c) The program shall utilize loaded mode dynamometer test equipment, as determined through the pilot demonstration program.

(d) Vehicles in the enhanced program area which are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 that use loaded mode dynamometers.

(e) (1) The department may implement the program established pursuant to subdivision (a) through a network of privately operated test-only facilities established pursuant to contracts to be awarded pursuant to this section.

(2) The initial contracts awarded pursuant to this section shall terminate not later than seven years from the date that the contracts were executed.

(f) No person shall be a contractor of the department for test-only facilities in all air basins, exclusively, where the enhanced program is in effect unless the department determines, after a public hearing, that there is not more than one qualified contractor. The South Coast Air Basin shall have at least two contractors, and the combined enhanced program area that includes Bakersfield, Fresno, and Sacramento shall have at least two contractors. The department may

operate test-only facilities on an interim basis while contractors are being sought.

(g) (1) In awarding contracts under this section, the department shall request bids through the issuance of a request for proposal.

(2) The department shall first determine which bidders are qualified, and then award the contract to the qualified bidder, giving priority to the test cost and convenience to motorists.

(3) The department shall provide a contractual preference, as determined by the department, not to exceed 10 percent of the total proposal evaluation score, based on the following factors:

(A) Up to 5 percent to bidders providing firm commitments to employ businesses that are licensed or otherwise substantially participating in the smog check program after January 1, 1994.

(B) Up to 5 percent to bidders based on the extent to which bidders maximize the potential economic benefit of the smog check program on this state over the term of the contract. That potential economic benefit shall include the percentage of work performed by California-based firms, the potential of the total project work force who will be California residents, and the percentage of subcontracts that will be awarded to California-based firms.

(4) Any contract executed by the department for the operation of a test-only facility shall expressly require compliance with this chapter and any regulations adopted by the department pursuant to this chapter.

(h) The department shall ensure that there is a sufficient number of test-only facilities, and that they are properly located, to ensure reasonable accessibility and convenience to all persons within an enhanced program area, and that the waiting time for consumers is minimized. The department may operate test-only facilities on an interim basis to ensure convenience to consumers. The department shall specify in the request for proposal the minimum number of test-only facilities that are required for the program. Any contracts initially awarded pursuant to this section shall ensure that the contractors are capable of fulfilling the requirements of subdivision (a).

(i) Any data generated at a test-only facility shall be the property of the state, and shall be fully accessible to the department at any time. The department may set contract specifications for the storage of that data in a central data storage system or facility designated by the department.

(j) The department shall ensure an effective transition to the new program by implementing an effective public education program and may specify in the request for proposal a dollar amount that bidders are required to include in their bids for public education activities, to be implemented pursuant to Section 44070.5.

(k) The department shall ensure the effective management of the test-only facilities and shall specify in the request for proposal that a manager be present during all hours of station operation.

(*l*) The department shall ensure and facilitate the effective transition of employees of businesses that are licensed or otherwise substantially participating in the smog check program and may specify in the request for proposal that test-only facility management be Automotive Service Excellence (ASE) certified, or be certified by a comparable program as determined by the department.

(m) As part of the contracts to be awarded pursuant to subdivision (e), the department may require contractors to perform functions previously undertaken by referee stations throughout the state, as determined by the department, at some or all of the affected stations in enhanced areas, and at additional stations outside enhanced areas only to the extent necessary to provide appropriate access to referee functions.

(n) Notwithstanding any other provision of law, to avoid delays to the program implementation timeline required by this chapter or the Clean Air Act, the Department of General Services, at the request of the department, may exempt contracts awarded pursuant to this section from existing laws, rules, resolutions, or procedures that are otherwise applicable, including, but not limited to, restrictions on awarding contracts for more than three years. The department shall identify any exemptions requested and granted pursuant to this subdivision and report thereon to the Legislature.

(o) This section shall not be implemented unless the memorandum of agreement described in Section 44081.6 is signed by both the California Environmental Protection Agency and the Environmental Protection Agency.

(p) The department shall implement the program established in this section only in urbanized areas classified by the Environmental Protection Agency as a serious, severe, or extreme nonattainment area for ozone or a moderate or serious nonattainment area for carbon monoxide with a design value greater than 12.7 ppm, and shall not implement the program in any other area.

(q) If existing smog check stations, in order to participate in the enhanced program, have been required to make additional investments of more than ten thousand dollars ($10,000), the department shall submit recommendations to the Governor and the Legislature for any appropriate mitigation measures.

SEC. 3. Section 44014.2 is added to the Health and Safety Code, to read:

44014.2. The department shall develop a program for the voluntary certification of licensed smog check stations, or the department may accept a smog check station certification program proposed by accredited industry representatives. Such a certification program, which may be called a "gold shield" program, shall be for the purpose of providing consumers, whose vehicles fail an emissions test at a test-only facility, an option of services at a single location to prevent the necessity for additional trips back to the test-only facility for vehicle certification.

SEC. 4. Section 44014.4 is added to the Health and Safety Code, to read:

44014.4. (a) A licensed smog check station that has been certified pursuant to Section 44014.2 may advertise that fact, and the advertisement may include the scope of work established by the program.

(b) It is an unfair business practice and a violation of Section 17500 of the Business and Professions Code for any licensed smog check station that is not so certified to advertise as having obtained certification or as complying with the scope of work, code of ethics, or certification standards established by the certification program.

SEC. 5. Section 44014.5 of the Health and Safety Code is amended to read:

44014.5. (a) The enhanced program shall provide for the testing and retesting of vehicles in accordance with Sections 44010.5, 44014.2, and this section.

(b) The repair of vehicles at test-only facilities shall be prohibited, except that the minor repair of components damaged by station personnel during inspection at the station, any minor repair which is necessary for the safe operation of a vehicle while at a station, or other minor repairs, such as the reconnection of hoses or vacuum lines, may be undertaken at no charge to the vehicle owner or operator if authorized in advance in writing by the department.

(c) The department shall provide for the distribution to consumers by test-only facilities of a list, compiled by region, of smog check stations licensed to make repairs of vehicular emission control systems. A test-only facility shall not refer a vehicle owner to any particular provider of vehicle repair services.

(d) The department shall establish standards for training, equipment, performance, or data collection for test-only facilities.

(e) The department shall prohibit test-only facilities from engaging in other business activities that represent a conflict of interest, as determined by the department.

(f) The test-only facility may charge a fee, established by the department, sufficient to cover the facility's cost to perform the tests or services, including, but not limited to, referee services and the issuance of waivers and hardship extensions required by this chapter. In addition, the station shall charge and collect the certificate fee established pursuant to Section 44060. This subdivision shall apply only to facilities contracted for pursuant to subdivision (e) of Section 44010.5.

(g) The department shall ensure that there is a sufficient number of test-only facilities to provide convenient testing for the following vehicles:

(1) All vehicles identified and confirmed as gross polluters pursuant to Section 44081 and Section 27156 of the Vehicle Code.

(2) All vehicles identified by a smog check station prior to repairs as having been tampered with.

(3) (A) Vehicles initially identified as gross polluters by a smog check station licensed as a test-and-repair station and certified pursuant to Section 44014.2 may be issued a certificate of compliance by a test-only facility or by the licensed smog check station certified pursuant to Section 44014.2 at which they were initially identified as a gross polluter.

(B) For purposes of this section, the department may conduct a pilot program to allow vehicles initially identified as gross polluters to be repaired and issued a certificate of compliance by a facility licensed and certified pursuant to Section 44014.2. For the purposes of this pilot program, the department may adopt regulations imposing additional station requirements.

(4) All vehicles designated by the department pursuant to Sections 44014.7 and 44020.

(5) Vehicles issued an economic hardship extension in the previous biennial inspection of that vehicle.

(h) The department shall provide a sufficient number of test-only facilities authorized to perform referee functions to provide convenient testing for those vehicles that are required to report to, and receive a certificate of compliance from, a test-only facility by this chapter, including all of the following:

(1) All vehicles seeking to utilize state-operated financial assistance or inclusion in authorized scrap programs.

(2) All vehicles unable to obtain a certificate of compliance from a licensed smog check station pursuant to subdivision (c) of Section 44015.

(3) Any other vehicles that may be designated by the department.

(i) (1) Gross polluters shall be referred to a test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (3) of subdivision (g), for a postrepair inspection and retest pursuant to subdivision (g). Simply passing the emissions test shall not be a sufficient condition for receiving a certificate of compliance. A certificate of compliance shall only be issued to a vehicle which does not have any defects with its emission control system or any defects which could lead to damage of its emission control system, as provided in regulations adopted by the department.

(2) The department shall require all vehicles which are tested pursuant to this chapter and found to be gross polluters, or which are found to have been tampered with, to be tested annually at a test-only facility for at least two, but not more than five, consecutive years, as the department determines to be necessary to ensure that the program will comply with Environmental Protection Agency performance standards.

SEC. 6. Section 44015 of the Health and Safety Code, as amended by Section 2 of Chapter 982 of the Statutes of 1995, is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Section 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (3) of subdivision (g) of Section 44014.5.

(3) A vehicle described in subdivision (c).

(4) A vehicle that was issued an economic hardship extension within the last 12 months.

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) An emission cost waiver shall be issued by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. An emission cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No emission cost waiver shall be issued until there has been an actual expenditure by the vehicle owner of an amount at least equal to the applicable repair cost limit specified in Section 44017.

(2) If the department implements an economic hardship extension program, a one-time economic hardship extension, valid for 12 months, may be issued pursuant to subdivision (e) of Section 44017, upon the request of the vehicle owner, by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable emission limit, as established by the department, and that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected.

(d) No emission cost waiver shall be issued under any of the following circumstances:

(1) If a vehicle was issued an emission cost waiver or economic hardship extension in the previous biennial inspection of that vehicle.

(2) If a vehicle is designated as a gross polluter pursuant to this chapter, except as otherwise provided in this subdivision or Section 44017.

(3) Upon initial registration of all of the following: a direct import vehicle, a vehicle previously registered outside this state, a dismantled vehicle pursuant to Section 11519 of the Vehicle Code, a vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(e) A certificate of compliance or noncompliance shall be valid for 90 days.

(f) A test may be made at any time within 90 days prior to the date otherwise required.

(g) An economic hardship extension shall not be issued to a vehicle that was issued an emission cost waiver in the previous biennial inspection of that vehicle.

SEC. 7. Section 44015 of the Health and Safety Code, as amended by Section 3 of Chapter 982 of the Statutes of 1995, is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle which meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Section 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (3) of subdivision (g) of Section 44014.5.

(3) A vehicle described in subdivision (c).

(4) A vehicle that was issued a hardship extension within the last 12 months.

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) An emission cost waiver shall be issued by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. An emission cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No emission cost waiver shall be issued until there has been an actual expenditure by the vehicle owner of an amount at

least equal to the applicable repair cost limit specified in Section 44017.

(2) If the department implements an economic hardship extension program, a one-time economic hardship extension, valid for 12 months, may be issued pursuant to subdivision (e) of Section 44017, upon the request of the vehicle owner, by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable emission limit established by the department and that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected.

(d) No emission cost waiver shall be issued under any of the following circumstances:

(1) If a vehicle was issued an emission cost waiver or economic hardship extension in the previous biennial inspection of that vehicle.

(2) If a vehicle is designated as a gross polluter pursuant to this chapter, except as otherwise provided in this subdivision or Section 44017.

(3) Upon initial registration of all of the following: a direct import vehicle, a vehicle previously registered outside this state, a dismantled vehicle pursuant to Section 11519 of the Vehicle Code, a vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(4) To a motor vehicle registered in the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District that has been operated in excess of the applicable target pollution miles for that vehicle.

(e) A certificate of compliance or noncompliance shall be valid for 90 days.

(f) A test may be made at any time within 90 days prior to the date otherwise required.

(g) (1) The certificate of compliance or the certificate of noncompliance shall indicate the odometer reading for the vehicle, or an alternative and higher mileage figure certified by the owner to be accurate pursuant to paragraph (2).

(2) The vehicle owner or operator shall sign a statement appearing on the vehicle inspection report certifying the true mileage of the vehicle to the best of the owner's or operator's knowledge.

(3) If a motor vehicle registered in the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District, other than an authorized emergency vehicle, as defined in Section 165 of the Vehicle Code, or an employer-provided carpool or vanpool vehicle, meets the requirements of Section 44012, but has been operated for more than the applicable target pollution

miles since its last smog check or fails the visual odometer check specified in Section 44001.6 and paragraph (8) of subdivision (a) of Section 44012, the smog check station shall issue a qualified certificate of compliance or a certificate of noncompliance indicating that the vehicle shall be presented for a smog check at a test-only station or a test and repair station located within the appropriate district after one year rather than in two years.

(4) On and after February 1, 1995, or on and after the date determined pursuant to Section 32 of the act adding this paragraph, whichever is later, the smog check stations in the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District shall report electronically to the Department of Motor Vehicles centralized data base established pursuant to Section 44037.1 the odometer reading for the tested motor vehicle, whether or not the vehicle has met the requirements of Section 44012, and whether the vehicle has been operated for more than the applicable target pollution miles.

(5) If the determination is made that the vehicle has been operated in excess of the applicable target pollution miles, the vehicle inspection report shall contain a message informing the owner that the mileage limit set by the appropriate district has been exceeded and annual smog inspections are now required.

(h) An economic hardship extension program shall not be issued to a vehicle that was issued an emission cost waiver in the previous biennial inspection of that vehicle.

(i) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 8. Section 44015 of the Health and Safety Code, as amended by Section 4 of Chapter 982 of the Statutes of 1995, is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle which meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station, that is both licensed and certified pursuant to Section 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (3) of subdivision (g) of Section 44014.5.

(3) A vehicle described in subdivision (c).

(4) A vehicle that was issued an economic hardship extension within the last 12 months.

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) An emission cost waiver shall be issued by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. An emission cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of complying with Section 4000.3 of the Vehicle Code. No emission cost waiver shall be issued until there has been an actual expenditure by the vehicle owner of an amount at least equal to the applicable repair cost limit specified in Section 44017.

(2) If the department implements an economic hardship extension program, a one-time economic hardship extension, valid for 12 months, may be issued pursuant to subdivision (e) of Section 44017, upon the request of the vehicle owner, by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable emission limit, as established by the department, and that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected.

(d) No emission cost waiver shall be issued under any of the following circumstances:

(1) If a vehicle was issued an emission cost waiver or economic hardship extension in the previous biennial inspection of that vehicle.

(2) If a vehicle is designated as a gross polluter pursuant to this chapter, except as otherwise provided in this subdivision or Section 44017.

(3) Upon initial registration of all of the following: a direct import vehicle, a vehicle previously registered outside this state, a dismantled vehicle pursuant to Section 11519 of the Vehicle Code, a vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(e) A certificate of compliance or noncompliance shall be valid for 90 days.

(f) A test may be made at any time within 90 days prior to the date otherwise required.

(g) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(h) An economic hardship extension shall not be issued to a vehicle that was issued an emission cost in the previous biennial inspection of that vehicle.

SEC. 9. Section 44033 of the Health and Safety Code is amended to read:

44033. (a) (1) Any facility meeting the requirements established by the department pursuant to this chapter may be licensed as a test-only, test and repair, or repair-only smog check station. A licensed smog check station shall display an identifying sign prescribed by the department in a manner conspicuous to the public.

(2) A licensed smog check station certified pursuant to Section 44014.2 shall display an identifying sign prescribed by the department.

(b) No licensed or certified smog check station shall require, as a condition of performing the test, that any needed repairs or adjustment be done by the person, or at the facility of the person, performing the test.

(c) If a motor vehicle, including a commercial vehicle, is tested at a facility licensed to perform tests and repairs pursuant to this chapter, the facility shall provide the customer with a written estimate pursuant to Section 9884.9 of the Business and Professions Code. The written estimate shall contain a notice to the customer stating that the customer may choose another smog check station to perform needed repairs, installations, adjustments, or subsequent tests.

(d) Charges for testing or repair, or both, shall be separately stated.

(e) The department shall require the posting of station licenses and qualified technicians' certificates prominently in each place of business so as to be readily visible to the public.

SEC. 10. Section 44037.2 is added to the Health and Safety Code, to read:

44037.2. (a) The department may enter into a contract for telecommunication, programming, data analysis, data processing, and other services necessary to operate and maintain the centralized computer data base and computer network specified in Section 44037.1.

(b) The department may, for each transmittal of data to the centralized data base, charge a licensed smog check station a transaction fee established by the department. The transaction fee shall be sufficient to cover the actual costs of operating and maintaining the current data base and network.

(c) Any contract made pursuant to this section may authorize compensation to the contractor from the transaction fees established by the department. The contractor shall maintain the transaction fees, which may be collected directly by the contractor from the licensed smog check stations, in a separate custodial account that the contractor shall account for and manage in accordance with generally accepted accounting standards and principles.

SEC. 11. Section 44081 of the Health and Safety Code is amended to read:

44081. (a) (1) The department, in cooperation with the state board, shall institute procedures for auditing the emissions of vehicles while actually being driven on the streets and highways of the state. The department may undertake those procedures itself or seek a qualified vendor of these services. The primary object of the procedures shall be the detection of gross polluters. The procedures shall consist of techniques and technologies determined to be effective for that purpose by the department, including, but not limited to, remote sensing. The procedures may include pullovers for roadside emissions testing and inspection. The department shall consider the recommendations of the review committee based on the outcome of the pilot demonstration program conducted pursuant to Section 44081.6.

(2) The department may additionally use other methods to identify gross polluting vehicles for out-of-cycle testing and repair.

(b) The department shall, by regulation, establish a program for the out-of-cycle testing and repair of vehicles found, through roadside auditing, to be emitting at levels that exceed specified standards. The program shall include all of the following elements:

(1) Emission standards, and test and inspection procedures and regulations, adopted in coordination with the state board, applicable to vehicles tested during roadside auditing. Emission standards for issuance of a notice of noncompliance to a gross polluter shall be designed to maximize the identification of vehicles with substantial excess emissions.

(2) Procedures for issuing notices of noncompliance to owners of gross polluters, either at the time of the roadside audit, or subsequently by certified mail, or by obtaining a certificate of mailing as evidence of service, using technologies for recording license plate numbers. The notice of noncompliance shall provide that, unless the vehicle is brought to a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Section 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (3) of subdivision (g) of Section 44014.5, for emissions testing within 30 days, the owner will be required to pay an administrative fee of five hundred dollars ($500) to be collected by the Department of Motor Vehicles at the next annual registration renewal or the next change of ownership of the vehicle, whichever occurs first. Commencing on the 31st day after issuance of the notice of noncompliance, the fee shall accrue at the rate of five dollars ($5) per day up to the five hundred dollars ($500) maximum.

(3) Procedures for the testing of vehicles identified as gross polluters by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Section 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (b) of paragraph (3) of subdivision (g) of Section

44014.5, to confirm that the vehicle exceeds the minimum emission standard for gross polluters set by the department.

(4) Procedures requiring owners of vehicles confirmed as gross polluters to have the vehicle repaired, resubmitted for testing, and obtain a certificate of compliance from a designated test-only facility or removed from service as attested by a certificate of nonoperation from the Department of Motor Vehicles within 30 days or be required to pay an administrative fee of not more than five hundred dollars ($500), to be collected by the Department of Motor Vehicles at the next annual registration renewal or the next change of ownership, whichever occurs first. Commencing on the 31st day after issuance of the notice of noncompliance, the fee shall accrue at the rate of five dollars ($5) per day up to the five hundred dollars ($500) maximum. The registration of a vehicle shall not be issued or renewed if that vehicle has been identified as a gross polluter and has not been issued a certificate of compliance. Except as provided in subdivision (b) of Section 9250.18 of the Vehicle Code, any revenues collected by the Department of Motor Vehicles pursuant to this subdivision and Section 9250.18 of the Vehicle Code shall be deposited in the Vehicle Inspection and Repair Fund. If the ownership of the vehicle is transferred, the administrative fee provided for in this subdivision shall be waived if the vehicle is brought into compliance.

(5) A procedure for notifying the Department of Motor Vehicles of notices of noncompliance issued, so that the Department of Motor Vehicles may provide effective collection of the administrative fee. The Department of Motor Vehicles shall cooperate with, and implement the requirements of, the department in that regard.

(6) The department may adopt any other regulations necessary for the effective implementation of this section, as determined by the department.

(c) Upon the request of the department, the Department of the California Highway Patrol shall provide assistance in conducting roadside auditing, to consist of (1) the stopping of vehicles and traffic management, and (2) the issuance of notices of noncompliance to gross polluters. The department shall reimburse the Department of the California Highway Patrol for its costs of providing those services. The Department of Transportation and affected local agencies shall provide necessary assistance and cooperation to the department in the operation of the program.

(d) There shall be no repair cost limit imposed pursuant to Section 44017 for any repairs that are required to be made under the roadside auditing program, except as provided in subdivision (d) of Section 44017.

SEC. 12. Section 44103 of the Health and Safety Code is amended to read:

44103. Notwithstanding any other provision of law, the program shall also do both of the following:

(a) Authorize the Department of Motor Vehicles, at the request of persons engaged in the purchase and retirement of vehicles under the program, to send notices to vehicle owners who are candidates for the sale of vehicles under the program describing the opportunity to participate in the program. The Department of Motor Vehicles may recover all costs of those notifications from the requesting party or parties.

(b) Allow the issuance of nonrevivable junk certificates for vehicles retired under the program, which shall allow program vehicles to be scrapped only for parts, except those parts identified pursuant to subdivision (a) of Section 44120.

SEC. 13. Section 3016 of the Vehicle Code is amended to read:

3016. (a) New motor vehicle dealers and other licensees under the jurisdiction of the board shall be charged fees sufficient to fully fund the board's activities other than those conducted pursuant to Section 472.5 of the Business and Professions Code. The board may recover the direct cost of the activities required by Section 472.5 of the Business and Professions Code by charging the Department of Consumer Affairs a fee which shall be paid by the bureau with funds appropriated from the Certification Account in the Consumer Affairs Fund. All fees shall be deposited, and held separate from other moneys, in the Motor Vehicle Account in the State Transportation Fund, and shall not be transferred to the State Highway Account pursuant to Section 42273.

(b) The fees shall be available, when appropriated, exclusively to fund the board's activities. If at the conclusion of any fiscal year the amount of fees collected exceeds the amount of expenditures for this purpose during the fiscal year, the surplus shall be carried over into the succeeding fiscal year.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The state is currently negotiating contracts with private parties relating to the Vehicle Inspection and Maintenance Program. Those seven-year contracts will take effect before January 1, 1997. Therefore, to avoid a costly delay in the statewide implementation of improvements to the smog check program, it is necessary that this act take effect immediately.

CHAPTER 1089

An act to add Section 2056.1 to the Business and Professions Code, relating to medicine.

[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 2056.1 is added to the Business and Professions Code, to read:

2056.1. (a) The purpose of this section is to ensure that health care service plans and their contracting entities do not enter into contracts with physicians and surgeons or other licensed health care providers that interfere with any ethical responsibility or legal right of physicians and surgeons or other licensed health care providers to discuss with their patients information relevant to their patients' health care. It is the intent of the Legislature to guarantee that a physician and surgeon or other licensed health care provider can communicate freely with, and act as advocate for, his or her patient.

(b) Health care service plans and their contracting entities shall not include provisions in their contracts that interfere with the ability of a physician and surgeon or other licensed health care provider to communicate with a patient regarding his or her health care, including, but not limited to, communications regarding treatment options, alternative plans, or other coverage arrangements. Nothing in this section shall preclude a contract provision that provides that a physician and surgeon, or other licensed health care provider, may not solicit for alternative coverage arrangements for the primary purpose of securing financial gain.

(c) Any contractual provision inconsistent with this section shall be void and unenforceable.

(d) For purposes of this section, "licensed health care provider" means any person licensed or certified pursuant to this division or licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act.

(e) No communication regarding treatment options shall be represented or construed to expand or revise the scope of benefits or covered services under a health care service plan or insurance contract.

CHAPTER 1090

An act to amend Sections 273a and 273d of, and to add Section 273.1 to, the Penal 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 273a of the Penal Code is amended to read:

273a. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or

permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 48 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

SEC. 2. Section 273d of the Penal Code is amended to read:

273d. (a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars ($6,000), or by both that imprisonment and fine.

(b) Any person who is found guilty of violating subdivision (a) shall receive a four-year enhancement for a prior conviction of that offense provided that no additional term shall be imposed under this

subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 36 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

SEC. 3. Section 273.1 is added to the Penal Code, to read:

273.1. (a) Any treatment program to which a child abuser convicted of a violation of Section 273a or 273d is referred as a condition of probation, shall meet the following criteria:

(1) Substantial expertise and experience in the treatment of victims of child abuse and the families in which abuse and violence has occurred.

(2) Staff providing direct service are therapists licensed to practice in this state or are under the direct supervision of a therapist licensed to practice in this state.

(3) Utilization of a treatment regimen designed to specifically address the offense, including methods of preventing and breaking the cycle of family violence, anger management, and parenting education which focuses, among other things, on means of identifying the developmental and emotional needs of the child.

(4) Utilization of group and individual therapy and counseling, with groups no larger than 12 persons.

(5) Capable of identifying substance abuse and either treating the abuse or referring the offender to a substance abuse program, to the extent that the court has not already done so.

(6) Entry into a written agreement with the defendant that includes an outline of the components of the program, the

attendance requirements, a requirement to attend group session 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.

(7) The program may include, on the recommendation of the treatment counselor, family counseling. However, no child victim shall be compelled or required to participate in the program, including family counseling, and no program may condition a defendant's enrollment on participation by the child victim. The treatment counselor shall privately advise the child victim that his or her participation is voluntary.

(b) 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 child abuser's treatment counseling program.

(c) Upon request by the child abuser's treatment counseling program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(d) The child abuser's treatment counseling program shall provide the probation department and the court with periodic progress reports at least every three months that include attendance, fee payment history, and program compliance. The program shall submit a final evaluation that includes the program's evaluation of the defendant's progress, and recommendation for either successful or unsuccessful termination of the program.

(e) The defendant shall pay for the full costs of the treatment program, including any drug testing. However, the court may waive any portion or all of that financial responsibility upon a finding of an inability to pay. Upon the request of the defendant, the court shall hold a hearing to determine the defendant's ability to pay for the treatment program. At the hearing the court may consider all relevant information, but shall consider the impact of the costs of the treatment program on the defendant's ability to provide food, clothing, and shelter for the child injured by a violation of Section 273a or 273d. If the court finds that the defendant is unable to pay for any portion of the costs of the treatment program, its reasons for that finding shall be stated on the record. In the event of this finding, the program fees or a portion thereof shall be waived.

(f) All programs accepting referrals of child abusers pursuant to this section shall accept offenders for whom fees have been partially or fully waived. However, the court shall require each qualifying program to serve no more than its proportionate share of those offenders who have been granted fee waivers, and require all qualifying programs to share equally in the cost of serving those offenders with fee waivers.

SEC. 4. 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 1091

An act to add Section 1383.1 to the Health and Safety Code, and to add Sections 10123.67 and 11512.61 to the Insurance Code, relating to health care.

[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 1383.1 is added to the Health and Safety Code, to read:

1383.1. (a) On or before July 1, 1997, every health care service plan shall file with the department a written policy describing the manner in which the plan determines if a second medical opinion is medically necessary and appropriate. Notice of the policy and information regarding the manner in which an enrollee may receive a second medical opinion shall be provided to all enrollees in the plan's evidence of coverage. The written policy shall describe the manner in which requests for a second medical opinion are reviewed by the plan.

(b) This section shall not apply to any health care service plan contract authorized under Article 5.6 (commencing with Section 1374.60).

(c) Nothing in this section shall require a health care service plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract, nor to provide services through providers who are not under contract with the plan.

SEC. 2. Section 10123.67 is added to the Insurance Code, immediately following Section 10123.6, to read:

10123.67. (a) On or before July 1, 1997, every disability insurer that covers hospital, medical, or surgical expenses, as described in subdivision (b), shall file with the department a written policy, which is not subject to approval or disapproval by the department, describing the manner in which the insurer determines if a second medical opinion is medically necessary and appropriate. Notice of the

policy and information regarding the manner in which an insured may receive a second medical opinion shall be provided to all insureds in the insurer's evidence of coverage. The written policy shall describe the manner in which requests for a second medical opinion are reviewed by the insurer.

(b) This section shall only apply to disability insurers covering hospital, medical, or surgical expenses that contract with providers for alternative rates pursuant to Section 10133 or 11512 and that limit payments under those policies to services secured by insureds from providers charging alternative rates pursuant to the contracts.

(c) Nothing in this section shall require the disability insurer to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract, nor to provide services through providers who are not under contract with the plan.

SEC. 3. Section 11512.61 is added to the Insurance Code, immediately following 11512.6, to read:

11512.61. On or before July 1, 1997, every nonprofit hospital service plan shall file with the department a written policy, which is not subject to approval or disapproval by the department, describing the manner in which the plan determines if a second medical opinion is medically necessary and appropriate. Notice of the policy and information regarding the manner in which a member may receive a second medical opinion shall be provided to all members. The written policy shall describe the manner in which requests for a second medical opinion are reviewed by the plan.

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 1092

An act to add Sections 40918.5, 40918.6, and 40918.7 to the Health and Safety Code, relating to air pollution.

[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. It is the intent of the Legislature that this act not affect the mandate on the State Air Resources Board to establish mitigation requirements commensurate with the contribution of upwind emissions to downwind ambient air pollutant levels as provided in Section 39610 of the Health and Safety Code.

SEC. 2. Section 40918.5 is added to the Health and Safety Code, to read:

40918.5. (a) Notwithstanding Sections 40918, 40919, and 40920, a district that does not have extreme air pollution may elect to not include a no-net-increase permitting program in its attainment plan if all of the following actions are taken:

(1) The governing board of the district finds, at a public hearing, that the no-net-increase permitting program is not necessary to achieve and maintain the state ambient air quality standards by the earliest practicable date.

(2) Prior to making the finding specified in paragraph (1), the governing board does both of the following:

(A) Reviews an estimate of the growth in emissions, if any, that is likely to occur as a result of the elimination of a no-net-increase permitting program.

(B) Complies with Section 40914 either by having adopted, or having scheduled for adoption, all feasible measures to achieve and maintain state ambient air quality standards, or by the use of an alternative emission reduction strategy.

(3) The governing board of the district submits its finding to the state board, and, within 60 days from the date of the submittal of the finding, the state board makes a determination based on quantifiable and substantial evidence that a no-net-increase permitting program is not necessary to comply with the mitigation requirements established pursuant to Section 39610 and that the no-net-increase permitting program is not necessary to achieve and maintain the state ambient air quality standards by the earliest practicable date. If the state board does not make any determination within that 60-day period, and the district does not agree to an extension of that time period, the district may make the election authorized by this subdivision.

(b) Nothing in this section shall relieve a district from the obligation to require the use of the best available control technology pursuant to Section 40918, 40919, or 40920.

SEC. 3. Section 40918.6 is added to the Health and Safety Code, to read:

40918.6. Following the implementation of Section 40918.5, both of the following shall occur:

(1) The district governing board's finding pursuant to paragraph (1) of subdivision (a) of Section 40918.5 shall, by operation of law, become part of the district's attainment plan.

(2) The state board shall, during any subsequent review of the district's attainment plan pursuant to subdivision (a) of Section 41500, determine based on quantifiable and substantial evidence whether or not a no-net-increase permitting program is necessary to comply with mitigation requirements established pursuant to Section 39610 or to achieve and maintain state ambient air quality standards by the earliest practicable date. If the state board determines that a no-net-increase permitting program is necessary to comply with those requirements, the district shall then adopt and implement a no-net-increase permitting program pursuant to Section 40918, 40919, or 40920.

SEC. 4. Section 40918.7 is added to the Health and Safety Code, to read:

40918.7. (a) Emission reduction offset credits created pursuant to subdivision (p) of Section 41865 shall be approved for use by a stationary source in another district if all of the following conditions are met:

(1) The district containing the source providing the offset credits does not have a no-net-increase permitting program in its attainment plan.

(2) The district where the offset credits are to be used is designated as having moderate air pollution.

(3) The district where the offset credits are to be used is located within the same air basin as, or within an air basin that is contiguous to, the air basin in which the district containing the source providing the offsets is located.

(4) The site where the offset credits will be used is located within 200 linear air miles from the source providing the offset credits.

(b) If all of the conditions specified in subdivision (a) are met, the district receiving the offset credit shall do both of the following:

(1) Determine the type and quantity of the emission reductions to be credited.

(2) Adopt a rule or regulation to discount the emission reductions credited to the stationary source. The discount shall not be less than the emission reduction for offsets from comparable sources located within the district boundaries.

SEC. 5. 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.

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CHAPTER 1093

An act to amend Section 1373.19 of, and to add Section 1373.20 to, the Health and Safety Code, relating to health care service plans.

[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 1373.19 of the Health and Safety Code is amended to read:

1373.19. Any health care service plan that includes a term that requires the parties to submit to binding arbitration shall, for those cases or disputes for which the total amount of damages claimed is two hundred thousand dollars ($200,000) or less, provide for selection by the parties of a single neutral arbitrator who shall have no jurisdiction to award more than two hundred thousand dollars ($200,000). This provision shall not be subject to waiver, except that nothing in this section shall prevent the parties to an arbitration from agreeing in writing, after a case or dispute has arisen and a request for arbitration has been submitted, to use a tripartite arbitration panel that includes two party-appointed arbitrators or a panel of three neutral arbitrators, or another multiple arbitrator system mutually agreeable to the parties. The agreement shall clearly indicate, in boldface type, that "A case or dispute subject to binding arbitration has arisen between the parties and we mutually agree to waive the requirement that cases or disputes for which the total amount of damages claimed is two hundred thousand dollars ($200,000) or less be adjudicated by a single neutral arbitrator." If the parties agree to waive the requirement to use a single neutral arbitrator, the enrollee or subscriber shall have three business days to rescind the agreement. If the agreement is also signed by counsel of the enrollee or subscriber, the agreement shall be immediately binding and may not be rescinded. If the parties are unable to agree on the selection of a neutral arbitrator, and the plan does not use a professional dispute resolution organization independent of the plan that has a procedure for a rapid selection or default appointment of a neutral arbitrator, the method provided in Section 1281.6 of the Code of Civil Procedure may be utilized.

SEC. 2. Section 1373.20 is added to the Health and Safety Code, immediately following Section 1373.19, to read:

1373.20. (a) If a plan uses arbitration to settle disputes with enrollees or subscribers, and does not use a professional dispute resolution organization independent of the plan that has a procedure for a rapid selection, or default appointment, of neutral arbitrators, the following requirements shall be met by the plan with respect to the arbitration of the disputes and shall not be subject to waiver:

(1) If the party seeking arbitration and the plan against which arbitration is sought, in cases or disputes requiring a single neutral arbitrator, are unable to select a neutral arbitrator within 30 days after service of a written demand requesting the designation, it shall be conclusively presumed that the agreed method of selection has failed and the method provided in Section 1281.6 of the Code of Civil Procedure may be utilized.

(2) In cases or disputes in which the parties have agreed to use a tripartite arbitration panel consisting of two party arbitrators and one neutral arbitrator, and the party arbitrators are unable to agree on the designation of a neutral arbitrator within 30 days after service of a written demand requesting the designation, it shall be conclusively presumed that the agreed method of selection has failed and the method provided in Section 1281.6 of the Code of Civil Procedure may be utilized.

(b) If a court reviewing a petition filed pursuant to Section 1373.19 or subdivision (a) finds that a party has engaged in dilatory conduct intended to cause delay in proceeding under the arbitration agreement, the court, by order, may award reasonable costs, including attorney fees, incurred in connection with the filing of the petition.

(c) If a plan uses arbitration to settle disputes with enrollees or subscribers, the following requirements shall be met with respect to extreme hardship cases:

(1) The plan contract shall contain a provision for the assumption of all or a portion of an enrollee's or subscriber's share of the fees and expenses of the neutral arbitrator in cases of extreme hardship.

(2) The plan shall disclose this provision to subscribers in any evidence of coverage issued or amended after August 1, 1997.

(3) The plan shall provide enrollees, upon request, with an application for relief under this subdivision, or information on how to obtain an application from the professional dispute resolution organization that will administer the arbitration process. If the plan uses a professional dispute resolution organization independent of the plan, the provision for assumption of the arbitration fees in cases of extreme hardship shall be established and administered by the dispute resolution organization.

(4) Approval or denial of the application shall be determined by either (A) a professional dispute resolution organization independent of the plan if the plan uses a professional dispute resolution organization, or (B) a neutral arbitrator who is not assigned to hear the underlying dispute, who has been selected pursuant to paragraph (1) of subdivision (a), and whose fees and expenses are paid for by the plan.

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 1094

An act to amend Section 1386 of the Health and Safety Code, and to add Section 10120.5 to the Insurance Code, relating to health care coverage.

[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 1386 of the Health and Safety Code is amended to read:

1386. (a) The commissioner may suspend or revoke any license issued under this chapter to a health care service plan or assess civil penalties if the commissioner determines that the licensee has committed any of the acts or omissions constituting grounds for disciplinary action.

(b) The following acts or omissions constitute grounds for disciplinary action by the commissioner:

(1) The plan is operating at variance with the basic organizational documents as filed pursuant to Section 1351 or 1352, or with its published plan, or in any manner contrary to that described in, and reasonably inferred, from the plan as contained in its application for licensure and annual report, or any modification thereof, unless amendments allowing the variation have been submitted to, and approved by, the commissioner.

(2) The plan has issued, or permits others to use, evidence of coverage or uses a schedule of charges for health care services which do not comply with those published in the latest evidence of coverage found unobjectionable by the commissioner.

(3) The health care service plan does not provide basic health care services to its enrollees and subscribers as set forth in the evidence of coverage. This subdivision shall not apply to specialized health care service plan contracts.

(4) The plan is no longer able to meet the standards set forth in Article 5 (commencing with Section 1367).

(5) The continued operation of the plan will constitute a substantial risk to its subscribers and enrollees.

(6) The plan has violated or attempted to violate, or conspired to violate, directly or indirectly, or assisted in or abetted a violation or conspiracy to violate any provision of this chapter or any rule or regulation adopted by the commissioner pursuant to this chapter.

(7) The plan has engaged in any conduct which constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

(8) The plan has permitted, or aided or abetted any violation by an employee or contractor who is a holder of any certificate, license, permit, registration or exemption issued pursuant to the Business and Professions Code, or the Health and Safety Code which would constitute grounds for discipline against the certificate, license, permit, registration, or exemption.

(9) The plan has aided or abetted or permitted the commission of any illegal act.

(10) The engagement of a person as an officer, director, employee, associate, or provider of the plan contrary to the provisions of an order issued by the commissioner pursuant to subdivision (c) of this section or subdivision (d) of Section 1388.

(11) The engagement of a person as a solicitor or supervisor of solicitation contrary to the provisions of an order issued by the commissioner pursuant to Section 1388.

(12) The plan, its management company, or any other affiliate of the plan, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in the plan, management company or affiliate, has been convicted of or pleaded nolo contendere to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions or duties of a person engaged in business in accordance with this chapter. The commissioner may revoke or deny a license hereunder irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(13) The plan violates Section 510, Section 2056, or Section 2056.1 of the Business and Professions Code.

(c) The commissioner may prohibit any person from serving as an officer, director, employee, associate, or provider of any plan or solicitor firm, or of any management company of any plan, or as a solicitor, if (1) the prohibition is in the public interest and the person has committed or caused, participated in, or had knowledge of a violation of this chapter by a plan, management company, or solicitor firm or if (2) the person was an officer, director, employee, associate, or provider of a plan or of a management company or solicitor firm of any plan whose license has been suspended or revoked pursuant to this section and the person had knowledge of, or participated in, any of the prohibited acts for which the license was suspended or revoked. A proceeding for the issuance of an order under this

subdivision may be included with a proceeding against a plan under this section or may constitute a separate proceeding, subject in either case to appropriate notice and opportunity for hearing to the person affected in accordance with subdivision (a) of Section 1397.

SEC. 2. Section 10120.5 is added to the Insurance Code, to read:

10120.5. Any act by a disability insurer that covers hospital, medical, or surgical expenses that violates Section 510, Section 2056, or Section 2056.1 of the Business and Professions Code shall also be a violation of this code.

SEC. 2.5. The reference to Section 2056.1 of the Business and Professions Code as set forth in Sections 1 and 2 of this act shall have no effect unless Section 2056.1, as added by Assembly Bill 3013, takes effect on or before January 1, 1997.

CHAPTER 1095

An act to amend and repeal Section 1368.02 of the Health and Safety Code, relating to health care service plans.

[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 1368.02 of the Health and Safety Code, as added by Section 1 of Chapter 787 of the Statutes of 1995, is repealed.

SEC. 2. Section 1368.02 of the Health and Safety Code, as added by Section 3 of Chapter 789 of the Statutes of 1995, is amended to read:

1368.02. (a) The commissioner shall establish and maintain a toll-free telephone number for the purpose of receiving complaints regarding health care service plans regulated by the commissioner.

(b) Every health care service plan shall publish the toll-free number required by this section on every new plan contract, on every evidence of coverage, on copies of plan grievance procedures, on plan complaint forms, and on all written notices to enrollees required under the grievance process of the plan. The toll-free number shall be displayed by the plan in each of these documents in 12-point boldface type in the following regular type statement:

"The California Department of Corporations is responsible for regulating health care service plans. The department has a toll-free telephone number [1-800-telephone number] to receive complaints regarding health plans. If you have a grievance against the health plan, you should contact the plan and use the plan's grievance process. If you need the department's help with a complaint involving an emergency grievance or with a grievance that has not been satisfactorily resolved by the plan, you may call the

department's toll-free telephone number."

(c) If the plan's revised evidence of coverage is not published and distributed to all enrollees on or before April 1, 1996, the plan shall provide all enrollees with the statement specified in subdivision (b) by April 1, 1996, in a written notification document dealing solely with the grievance process. Each plan's revised evidence of coverage shall include the statement specified in subdivision (b) no later than January 1, 1997.

(d) The commissioner shall designate an ombudsperson. The duties of the ombudsperson shall be determined by the commissioner. The commissioner may designate a member of the existing staff to serve as the ombudsperson.

CHAPTER 1096

An act to repeal Sections 1568.10, 1568.11, 1568.12, 1568.13, 1568.14, 1568.18, 1568.20, 1568.21, 1568.23, 1568.24, and 1568.25 of, and to repeal Article 6.5 (commencing with Section 1310) of Chapter 2 of Division 2 of, the Health and Safety Code, to repeal Section 9535.5 of, and to repeal and add Division 8.5 (commencing with Section 9000) of the Welfare and Institutions Code, relating to elderly persons.

[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. Article 6.5 (commencing with Section 1310) of Chapter 2 of Division 2 of the Health and Safety Code is repealed.

SEC. 1.5. Section 1568.10 of the Health and Safety Code is repealed.

SEC. 2. Section 1568.11 of the Health and Safety Code is repealed.

SEC. 3. Section 1568.12 of the Health and Safety Code is repealed.

SEC. 4. Section 1568.13 of the Health and Safety Code is repealed.

SEC. 5. Section 1568.14 of the Health and Safety Code is repealed.

SEC. 6. Section 1568.18 of the Health and Safety Code is repealed.

SEC. 7. Section 1568.20 of the Health and Safety Code is repealed.

SEC. 8. Section 1568.21 of the Health and Safety Code is repealed.

SEC. 9. Section 1568.23 of the Health and Safety Code is repealed.

SEC. 10. Section 1568.24 of the Health and Safety Code is repealed.

SEC. 11. Section 1568.25 of the Health and Safety Code is repealed.

SEC. 12. Division 8.5 (commencing with Section 9000) of the Welfare and Institutions Code is repealed.

SEC. 13. Division 8.5 (commencing with Section 9000) is added to the Welfare and Institutions Code, to read:

DIVISION 8.5. MELLO-GRANLUND OLDER CALIFORNIANS ACT

CHAPTER 1. GENERAL PROVISIONS

9000. This division shall be known, and may be cited, as the Mello-Granlund Older Californians Act, that reflects the policy mandates and directives of the Older Americans Act of 1965, as amended, and sets forth the state's commitment to its older population and other populations served by the programs administered by the California Department of Aging.

9001. The Legislature hereby finds and recognizes all of the following:

(a) Older individuals constitute a fundamental resource of the state that previously has been undervalued and poorly utilized, and ways must be found to enable older individuals to apply their competence, wisdom, and experience for the benefit of all Californians.

(b) There is a continuing increase in the number of older individuals in proportion to the total population.

(c) Today, 14 percent of California's population currently is 60 years of age and over.

(d) By the year 2010, the first influx of baby boomers will constitute 29.2 percent of California's total population over 60 years of age. By the year 2020, baby boomers will constitute 70.2 percent of California's total population over 60 years of age.

(e) By the year 2020, older individuals will represent 21 percent of California's total population.

(f) While the number of persons over 60 years of age is increasing rapidly, the number of older women, minorities, and persons over the age of 75 are increasing at an even greater rate.

(g) Among persons over 75 years of age, there is a higher incidence of functional disabilities.

(h) The social and health problems of the older individual are further compounded by inaccessibility to existing services and by the unavailability of a complete range of services.

(i) Services to older individuals are administered by many different agencies and departments at both the state and local level.

(j) The planning and delivery of these services is not carried out with any degree of coordination among those agencies.

(k) Enhanced coordination reduces duplication, eliminates inefficiencies, and enhances service delivery for the consumer.

(*l*) The ability of the constantly increasing number of aged in the state to maintain self-sufficiency and personal well-being with the dignity to which their years of labor entitle them and to realize their

maximum potential as creative and productive individuals are matters of profound importance and concern for all of the people of this state.

9002. The Legislature finds and declares all of the following:

(a) Programs shall be initiated, promoted, and developed through all of the following:

(1) Volunteers and volunteer groups.

(2) Partnership with local governmental agencies.

(3) Coordinated efforts of state agencies.

(4) Coordination and cooperation with federal programs.

(5) Partnership with private health and social service agencies.

(6) Participation by older individuals in the planning and operation of all programs and services that may affect them.

(b) It shall be the policy of this state to give attention to the unique concerns of our most frail and vulnerable older individuals.

(c) Recognizing the diversity in geography, economy, culture, and life styles in California and the diversity of local senior citizen networks, it shall be the policy of this state to encourage and emphasize local control to achieve the most effective blend of state and local authority.

(d) In recognition of the many governmental programs serving seniors, and as specified in paragraph (2) of subdivision (c) of Section 9102, the California Department of Aging should coordinate, as existing resources permit, with other state departments in doing all of the following:

(1) Promote clear and simplified access to information assistance and services arrangements.

(2) Ensure that older individuals retain the right of free choice in planning and managing their lives.

(3) Ensure that health and social services are available that do all of the following:

(A) Allow older individuals to live independently at home or with others.

(B) Provide for advocacy for expansion of existing programs that prevent or minimize illness or social isolation, and allow individuals to maximize their dignity and choice of living.

(C) Provide for protection of older individuals from physical and mental abuse, neglect, and fraudulent practices.

(4) Foster both preventive and primary health care, including mental and physical health care, to keep older individuals active and contributing members of society.

(5) Encourage public and private development of suitable housing.

(6) Develop and seek support for plans to ensure access to information, counseling, and screening.

(7) Encourage public and private development of suitable housing and recreational opportunities to meet the needs of older individuals.

(8) Encourage development of efficient community services including access to low cost transportation services, that provide a choice in supported living arrangements and social assistance in a coordinated manner and that are readily available when needed.

(9) Encourage and develop meaningful employment opportunities for older individuals.

(10) Encourage the development of barrier-free construction and the removal of architectural barriers, so that more facilities are accessible to older individuals.

(11) Promote development of programs to educate persons who work with older individuals in gerontology and geriatrics.

(12) Encourage and support intergenerational programming and participation by community organizations and institutions to promote better understanding among the generations.

(e) The California Department of Aging shall ensure that, to the extent possible, the services provided for in accordance with this division shall be coordinated and integrated with services provided to older individuals by other entities of the state. That integration may include, but not be limited to, the reconfiguration of state departments into a coordinated unit that can provide for multiple services to the same consumers. Services provided under this division shall be managed, directly or through contract, by local area agencies on aging or other local systems.

9003. (a) If any section of this code relating to aging cannot be given effect without causing this state's plan to be out of conformity with federal requirements, the section shall become inoperative to the extent that it is not in conformity with federal requirements.

(b) The planning, development, and implementation of changes in this division shall encourage and allow concurrent implementation and operation of a long-term care integration pilot project consistent with the intent of Article 4.05 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9. In implementing changes to this division, the department shall work with the State Department of Health Services to ensure local determination and local designation of the most appropriate long-term care services agency for each Long-Term Care Integration Pilot Project site.

9004. Unless the context otherwise indicates, the definitions of the terms set forth in this chapter apply for purposes of this division.

9004.5. "Adult day health care" means an organized day program of therapeutic, social, and health activities and services provided pursuant to this division to elderly persons with functional impairments, either physical or mental, for the purpose of restoring or maintaining optimum capacity for self-care. When provided on a short-term basis, adult day health care serves as a transition from a health facility or home health program to personal independence. When provided on a long-term basis, adult day health care services as an option to institutionalization in long-term care facilities, when

24-hour skilled nursing care is not medically necessary or viewed as desirable by the recipient or his or her family.

9005. "Advisory council" means a specific representative body of laypersons and service providers that represent the interests of older individuals within the boundaries of a planning and service area and that is officially recognized by the area agency on aging, the commission, and the department.

9006. "Area agency on aging" means a private nonprofit or public agency designated by the department that works for the interests of older Californians within a planning and service area, and engages in community planning, coordination, and program development and, through contractual arrangements, provides a broad array of social and nutritional services.

9007. "Care or case management services" means:

(a) Client assessment, in conjunction with the development of a service plan with the participant and appropriate others, to provide for needs identified by the assessment.

(b) Authorization and arrangement for the purchase of services, or referral, with follow-up, to volunteer, informal, or third-party payer services.

(c) Service and participant monitoring to determine that services obtained were appropriate to need, adequate to meet the need, of acceptable quality, and provided in a timely manner.

(d) Followup with clients, including periodic contact and initiation of an interim assessment, if deemed necessary prior to scheduled reassessment.

9008. "Commission" means the California Commission on Aging.

9010. "Comprehensive and coordinated system" means a program of interrelated social and nutrition services designed to meet the needs of older individuals in a planning and service area.

9011. "Department" means the California Department of Aging.

9012. "Director" means the Director of the California Department of Aging.

9013. "Frail elderly" means a person having those chronic physical or mental limitations that restrict individual ability to carry out normal activities of daily living and that threaten an individual's capacity to live an independent life.

9014. "Greatest economic need" means the need resulting from an income level at or below the poverty threshold established by the Bureau of the Census.

9015. "Greatest social need" means the need caused by noneconomic factors, that include physical and mental disabilities, language barriers, cultural or social isolation, including that caused by racial and ethnic status (for example, Black, Hispanic, American Indian, and Asian American), that restrict an individual's ability to perform normal daily tasks or that threaten his or her capacity to live independently.

9016. "Long-term care" means a coordinated continuum of preventive, diagnostic, therapeutic, rehabilitative, supportive, and maintenance services that address the health, social, and personal needs of individuals who have restricted self-care capabilities. Services shall be designed to recognize the positive capabilities of the individual and maximize the potential for the optimum level of physical, social, and mental well-being in the least restrictive environment. Emphasis shall be placed on seeking services alternatives to institutionalization. Services may be provided by formal or informal support systems and may be continuous or intermittent. "Long-term care" may include licensed nursing facility, adult residential care, residential facility for the elderly, or home- and community-based services.

9017. "Older Americans Act" means Chapter 35 (commencing with Section 3001) of Title 42 of the United States Code.

9018. "Older individual" or "elderly" means a person 60 years of age or older, except where this provision is inconsistent with federal requirements.

9019. "Personal and community support networks" means families, friends, neighbors, church groups and community organizations to which the elderly turn naturally to for assistance.

9020. "Planning and service area" means an area specified by the department as directed by the Older Americans Act of 1965, as amended.

9021. "Preventive services" means services that avoid dependency and assist older persons in maintaining their good health, well-being, and growth.

9022. "Supportive services" means services that maintain individuals in home environments and avoid institutional care.

9023. "Systems of home and community based services" means an integrated continuum of service options available locally to older individuals and functionally-impaired adults, through programs administered by the department who seek to maximize self-care and independent living in the home or home-like environment.

CHAPTER 2. CALIFORNIA DEPARTMENT OF AGING

9100. (a) There is in the Health and Welfare Agency the California Department of Aging.

(b) The department's mission shall be to provide leadership to the area agencies on aging in developing systems of home- and community-based services that maintain individuals in their own homes or least restrictive home-like environments.

(c) In fulfilling its mission, the department shall develop minimum standards for service delivery to ensure that its programs meet consumer needs, operate in a cost-effective manner, and preserve the independence and dignity of aging Californians. In accomplishing its mission, the department shall consider available

data and population trends in developing programs and policies, collaborate with area agencies on aging, the commission, and other state and local agencies, and consider the views of advocates, consumers and their families, and service providers.

(d) The minimum standards for its programs shall ensure that the system meets all of the following requirements:

(1) Have the flexibility to respond to the needs of individuals, their families and caregivers.

(2) Provide for consumer choice and self-determination.

(3) Enable consumers to be involved in designing and monitoring the system.

(4) Be equally accessible to diverse populations regardless of income, consistent with existing state and federal law.

(5) Have consistent statewide policy, with local control and implementation.

(6) Include preventive services and home- and community-based support.

(7) Have cost containment and fiscal incentives consistent with the delivery of appropriate services at the appropriate level.

9101. (a) The department shall consist of a director, and any staff as may be necessary for proper administration.

(b) The department shall maintain its main office in Sacramento.

(c) The Governor, with the consent of the Senate, shall appoint the director. The Governor shall consider, but not be limited to, recommendations from the commission.

(d) The director shall have the powers of a head of a department pursuant to Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code, and shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) The director shall do all of the following:

(1) Be responsible for the management of the department and achievement of its statewide goals.

(2) Assist the commission in carrying out its mandated duties and responsibilities in accordance with Section 9202.

(f) The Secretary of the Health and Welfare Agency shall ensure effective coordination among departments of the agency in carrying out the mandates of this division. For this purpose, the secretary shall regularly convene meetings concerning services to older individuals that shall include, but not be limited to, the State Department of Health Services, the State Department of Social Services, the State Department of Mental Health, and the department.

(g) The Secretary of the Health and Welfare Agency shall also encourage other state departments that have other programs for older individuals to actively participate in periodic joint meetings for the joint purpose of coordinating service activities. These departments shall include, but are not limited to, the Department of Housing and Community Development and the Department of

Transportation in the Business, Transportation and Housing Agency, the Department of Parks and Recreation in the Resources Agency, the California Arts Council, and the Department of Veterans Affairs.

9102. The duties and powers of the department shall be:

(a) To administer all programs under the Older Americans Act of 1965, as amended, and this division, including providing ongoing oversight, monitoring, and service quality evaluation to ensure that service providers are meeting standards of service performance established by the department. This shall include, but is not limited to, all of the following:

(1) Setting program standards and providing standard materials for training.

(2) Providing technical assistance to area agencies on aging, program managers, staff, and volunteers providing services.

(3) Development of the state plan on aging according to federal law.

(4) Maintain a clearinghouse of information related to the interests and needs of older individuals and provide referral services, if appropriate.

(5) Maintain a management information and reporting system, demographic characteristics of the older population to be cross-classified by age, sex, race, and other information required for the planning process, and eliminate redundant and unnecessary reporting requirements.

(6) Encourage and support the involvement of volunteers in services to older individuals.

(7) Seek ways to utilize the private sector to assume greater responsibility in meeting the needs of older individuals.

(8) Encourage internships to be coordinated with schools of gerontology or related disciplines, including internships for older individuals.

(b) The department shall have primary responsibility for information received and dispersed to the area agencies on aging.

(c) The department shall be responsible for activities that promote the development, coordination, and utilization of resources to meet the long-term care needs of older individuals, consistent with its mission. The responsibilities shall include, but not be limited to, all of the following:

(1) Conduct research in the areas of alternative social and health care systems for older individuals.

(2) As specified in Section 9002, coordinate with agencies and departments that administer health, social, and related services for the purposes of policy development, development of care standards, consistency in application of policy, evaluation of alternative uses of available resources toward greater effectiveness in service delivery, including seeking additional federal and private dollars to support achievement of program goals, and ensure ongoing response to the

identified special needs of the chronically impaired to provide support that maximizes their level of functioning.

(3) Monitor and evaluate programs and services administered by the department, utilizing standardized methodology.

(4) Develop and implement training and technical assistance programs designed to achieve program goals.

(5) Establish criteria for the designation, sanctioning and defunding of area agencies on aging.

9105. The department may adopt and promulgate regulations for the purpose of carrying out this division.

9106. (a) The department shall administer the administrative cost limitation, as defined in applicable federal law or regulation on a statewide basis. This allocation shall be based on notices of grant award. The formula to be used for the allocation of those funds shall be as follows:

(1) Each planning and service area shall receive a base allocation of fifty thousand dollars ($50,000).

(2) The remainder of the funds available up to the statewide limitation shall be distributed to area agencies on aging on the basis of the number of persons over the age of 60 years per planning and service area.

(b) It is the intent of the Legislature that in the event that an area agency on aging chooses to use other sources of funds for the administration of its area plan, the federal money made available to that area agency on aging for administration shall be used for the provision of direct services within its planning and service area.

9107. The department may accept gifts and grants from any source, public or private, to assist it in the performance of its functions, and these gifts and grants shall operate to augment any appropriation made for the support of the department.

9108. In addition to any nutrition programs conducted under the McCarthy-Kennick Nutrition Program for the Elderly Act of 1972 (Chapter 5.7 (commencing with Section 18325) of Part 6 of Division 9), the department, with the approval of the Department of Finance, may make funds available from Section 17 of Chapter 157 of the Statutes of 1976 and Chapter 3 (commencing with Section 9200) to other nutrition projects serving the needs of individuals aged 60 or over and their spouses provided by public or private nonprofit persons or agencies upon such terms and conditions as the department specifies.

9109. The department shall, in consultation with nutrition site directors and area agencies on aging, develop policies and guidelines for senior nutrition sites that ensure food safety and that maximize the use of leftover meals and food products. The guidelines shall include, but not be limited to, senior education programs on good nutrition and handling, storage of leftover foods, and reviewing current nutrition site reservation procedures.

9110. (a) The department may make available state funds to fund senior nutrition programs that complement programs implemented pursuant to Title III of the federal Older Americans Act (42 U.S.C. Sec. 3021).

9111. (a) The Legislature finds and declares that there is a great disparity in the method by which the federal Older Americans Act (42 U.S.C. Sec. 3001, et seq.) and General Fund moneys are distributed to the 33 area agencies on aging in this state.

(b) It is the intent of the Legislature to correct these inequities in funding for nutrition and social service programs. It is further the intent of the Legislature that correction of these inequities be accomplished with minimal disruption to existing program services.

(c) The department, in consultation with the commission, the Area Agency on Aging Advisory Council of California, the California Association of Area Agencies on Aging, and representatives of provider groups, shall review the existing intrastate funding formula, established pursuant to Section 9112, for the allocation of state and federal funds provided for programs under Title III of the federal Older Americans Act (42 U.S.C. Sec. 3021 et seq.). The department shall update the formula in accordance with federal regulations and shall submit a report thereon to the chairperson of the fiscal committee of each house of the Legislature and the Chairperson of the Joint Legislative Budget Committee, no later than December 1, 1986. Changes to the intrastate funding formula may only be made by the Legislature.

(d) The department and commission shall hold hearings and present alternative criteria for public input relative to the funding formula provided for under subdivision (a).

(e) The department, based upon analysis and testimony provided for pursuant to subdivision (d), and information provided by the public, shall develop an implementation plan with cost factors to achieve parity amongst the area agencies on aging in California.

(f) The department shall ensure that priority consideration shall be given to criteria that reflect the state's intent to target services to those in greatest economic or social need, including, but not limited to, the low-income, non-English-speaking, minority, and frail elderly.

(g) The department shall report to the Legislature on the activities provided for in this section no later than December 1, 1986.

9112. (a) The department shall implement an intrastate funding formula in accordance with all federal regulations. This formula shall apply to all federal and state funds allocated for programs provided for under Title III of the federal Older Americans Act (42 U.S.C. Sec. 3021, et seq.).

(b) The intrastate funding formula shall include all of the following:

(1) Assurances that all area agencies on aging shall have a fifty thousand dollar ($50,000) administrative base with the remainder of

the allowable administrative dollars allocated to planning and service areas on the basis of number of persons over the age of 60 years.

(2) (A) When data is available, an annual update by the department for changes in population characteristics to include the number of persons per planning and service area over the age of 60 years and persons in greatest economic or social need as measured by all of the following variables which shall also be annually updated by the department:

(i) The number of persons over the age of 65 years receiving aid under the State Supplementary Program for the Aged, Blind, and Disabled, provided for under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9.

(ii) The number of persons over the age of 75 years.

(iii) The number of minority elderly over the age of 60 years.

(iv) The number of persons over the age of 60 years living alone.

(v) The number of non-English-speaking persons over the age of 60 years.

(B) The weight given to each variable shall simulate the weighting used in the Washington State intrastate funding formula adjusting for the geographic factor.

(3) A rural factor that guarantees a 105 percent allocation to rural planning and service areas.

(4) A hold-harmless factor that guarantees that no planning and service area shall have its federal and state allocation of funds under Title III of the federal Older Americans Act (42 U.S.C. Sec. 3021, et seq.), excluding area agency on aging administrative costs and funds carried over from the 1983–84 fiscal year, reduced below the 1984–85 fiscal year funding levels.

(c) In the event that additional federal or state funds, in excess of those appropriated under the 1984–85 Budget Act, or subsequent Budget Acts are made available for services, these funds shall be used to maintain existing service levels, with the remainder to be distributed to those planning and service areas which have been determined by the department to be under equity until parity is achieved.

(d) The department shall develop, in conjunction with the intrastate funding formula, a methodology for assuring compliance with the state targeting strategy on an intraplanning and service area basis. In developing this methodology the department shall provide assurances that as additional federal and state service dollars are allocated to the planning and service areas these dollars will be expended on those elderly individuals identified as in greatest economic or social need.

9114. The department may, where necessary to ensure the continued provision of services or program operation, advance available state funds to an area agency on aging in an amount up to one-sixth of the annual state and federal allocation to the area agency on aging.

CHAPTER 3. CALIFORNIA COMMISSION ON AGING

9200. (a) (1) There is in the state government the California Commission on Aging.

(2) The commission shall be composed of 25 persons, as follows:

(A) Nineteen persons shall be appointed by the Governor. Nine of the 19 persons shall be appointed by the Governor from lists of nominees submitted by the area agency on aging advisory councils. At least five names shall be submitted as nominees for each vacancy.

(B) Three persons appointed by the Speaker of the Assembly.

(C) Three persons appointed by the Senate Rules Committee.

(3) The commission shall be comprised of a majority of members 60 years of age or older.

(4) The commission shall be comprised of actual consumers of services under the federal Older Americans Act (42 U.S.C. Sec. 3001, et seq.), as amended.

(5) The commission shall be composed of representatives of the geographic, cultural, economic, and other social factors in the state.

(b) The commission composition requirements shall be complied with as vacancies occur.

9201. The term of office of members of the commission shall be three years. Members shall not serve more than two terms, and shall be appointed for staggered terms. The members shall select one of their members to serve as chairperson and one of their members to serve as vice chairperson on an annual basis.

A commissioner who fails to attend two consecutive monthly meetings or who fails to attend nine meetings per year, without having given written excuse acceptable to the commission, shall cause the commission to notify the appointing authority, and the appointing authority may declare the position vacant.

9202. The duties and functions of the commission shall be to do all of the following:

(a) Serve as the principal advocate body in the state on behalf of older individuals, including, but not limited to, advisory participation in the consideration of all legislation and regulations made by state and federal departments and agencies relating to programs and services that affect older individuals.

(b) Participate with the department in training workshops for community, regional, understand legislative, regulatory, and program implementation processes.

(c) Prepare, publish, and disseminate information, findings, and recommendations regarding the well-being of older individuals.

(d) Actively participate and advise the department in the development and preparation of the State Plan on Aging, conduct public hearings on the State Plan on Aging, review and comment on the state plan, and monitor the progress of the plan's implementation.

(e) Meet at least six times annually in order to study problems of older individuals and present findings and make recommendations.

(f) Hold hearings throughout the state, that may include conducting an annual statewide hearing inviting all departments administering programs affecting seniors, in order to gather information and advise the Governor, Legislature, department, and agencies on all levels of government regarding solutions to problems confronting older individuals and the most effective use of existing resources and available services for individuals.

(g) Hire an executive director and, within budgetary limits, such staff as may be necessary for the commission to fulfill its duties.

(h) Develop, in cooperation with the department, a method for the selection of delegates to the statewide legislative meeting of senior advocates.

(i) Perform other duties as may be required by statute, regulation, or resolution.

(j) Meet and consult with the area agency on aging advisory councils in order to exchange information, and assist in training, planning, and development of advocacy skills.

9203. The commission may accept gifts and grants from any source, public or private, to assist it in the performance of its functions, and the gifts and grants shall operate to augment any appropriation made for the support of the commission, provided that the department shall serve as the fiscal agent for the accounting of the gifts and grants and that no gifts or grants shall be used for the operation by the commission of direct service programs that would conflict with the department's duties and functions as described by law.

9203.5. The commission may also accept gifts on behalf of the California Senior Legislature and the Area Agency on Aging Advisory Council of California, subject to Section 9203, as those provisions apply to the commission.

9204. Wherever there is a reference in any statute of this state to the Citizens Advisory Committee on Aging of the California Commission on Aging, it shall be construed to refer to the California Commission on Aging if the reference concerns an advisory or advocacy function, or a function described in Section 9202. Any other reference shall be construed to refer to the department.

9205. Members of the commission shall be reimbursed for their actual and necessary travel and other expenses incurred in the performance of their official duties.

9206. The commission shall render those services that are necessary to implement this chapter pursuant to an agreement entered into with the California Senior Legislature.

CHAPTER 4. CALIFORNIA SENIOR LEGISLATURE

9300. (a) The Legislature finds and declares that the needs of senior citizens for public programs in health, social services, recreation, transportation, education, housing, cultural services, and other appropriate areas of service can best be assessed by senior citizens.

(b) The Legislature also finds and declares that the California Senior Legislature, having been in continuous service since first provided for in 1980, and since its first session in 1981, and having proved its usefulness in providing model legislation for older citizens and advocating for the needs of seniors, shall be established through this chapter and shall operate according to the procedures set forth in this chapter.

9301. (a) The California Senior Legislature shall be composed of two houses, the California Senior Senate, composed of 40 members, and the California Senior Assembly, composed of 80 members.

(b) Members of the California Senior Legislature shall serve two-year terms.

9302. The members of the California Senior Legislature shall be elected, in all 33 planning and service areas in California, according to rules developed by the California Senior Legislature in cooperation with the California Association of Area Agencies on Aging and the commission.

9304. The California Senior Legislature shall have the full authority to define its program and utilize its funds in any way necessary to carry out the duties of this chapter, provided that no such program or activity is in violation of state law or regulation.

9305. (a) The funds for the California Senior Legislature and the supportive activities of the commission for the California Senior Legislature shall be allocated from the California Fund for Senior Citizens, private funds directed to the Legislature or the commission for the purpose of funding activities of the California Senior Legislature, or appropriate federal funds.

(b) It is the intent of the Legislature that the General Fund shall not be liable for any of the costs of the California Senior Legislature.

CHAPTER 5. AREA AGENCIES ON AGING AND ADVISORY COUNCILS

9400. (a) The Legislature hereby declares and recognizes the area agencies on aging to be the local units on aging in California that are supported from an array of sources, including federal funding largely through the federal Older Americans Act (42 U.S.C. Sec. 3001, et seq.), state and local government assistance, the private sector, and individual contributions for services.

(b) Area agencies on aging shall operate in compliance with the Older Americans Act and applicable regulations.

(c) Each area agency on aging shall maintain a professional staff that is supplemented by volunteers, governed by a board of directors or elected officials, and whose activities are reviewed by an advisory council consisting primarily of older individuals from the community.

(d) Each area agency on aging shall create a plan that considers available data and population trends, assesses the needs for services provided under this division reflective of the community needs, identifies sources for funding those services, and develops and implements a plan for delivery of those services based on those needs. Each plan shall include developing area home- and community-based systems of care that maintain individuals in their own homes or least restrictive environment, providing better access to these services through information and referral, outreach, and transportation, and advocating for the elderly on local, state, and national levels.

(e) Area agencies on aging shall function as the community link at the local level for development of home- and community-based services provided under the department's programs.

(f) The area agencies on aging shall implement subdivision (b) of Section 9100 at the local level, with particular emphasis on coordinating with the local systems to enable individuals to live out their lives with maximum independence and dignity in their own homes and communities through the development of comprehensive and coordinated systems of home- and community-based care. Nothing in this division shall preclude local determination and designation of service coordinators other than area agencies on aging, for development and implementation of the long-term care integration pilot projects set forth in Article 4.05 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9.

(g) In fulfilling their mission, area agencies on aging shall build upon the resources and the commitment unique to each community and shall be guided by a 10-point description of a community-based system that shall do all of the following:

(1) Have a visible focal point of contact where anyone can go or call for help, information, or referral on any aging issue.

(2) Provide a range of service options.

(3) Ensure that these options are readily accessible to all older individuals, whether independent, semi-independent, or totally dependent, no matter what their income.

(4) Include a commitment of public, private, and voluntary resources committed to supporting the system.

(5) Involve collaborative decisionmaking among public, private, voluntary, religious, and fraternal organizations, as well as older individuals and consumers in the community.

(6) Offer special help or targeted resources for the most vulnerable older individuals, those in danger of losing their independence.

(7) Provide effective referral from agency to agency to ensure that information or assistance is received, no matter how or where contact is made in the community.

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older individuals.

(9) Have a unique character that is tailored to the specific nature of the community.

(10) Be directed by leaders in the community who have the respect, capacity, and authority necessary to convene all interested persons to assess needs, design solutions, track overall success, stimulate change, and plan community responses for the present and for the future.

9401. Area agencies on aging and other county agencies that provide services to older adults through an established multidisciplinary team, including the county departments of public social services, health, mental health, alcohol and drug abuse, and the public guardian, may provide information regarding older adult clients only to other county agencies with staff designated as members of a multidisciplinary team that are, or may be, providing services to the same individuals for purposes of identifying and coordinating the treatment of individuals served by more than one agency. The county patients' rights advocate shall report any negative consequences of the implementation of this exception to confidentiality requirements to the local mental health director.

9402. The Legislature hereby declares and recognizes each area agency on aging advisory council as a principal advocate body on behalf of older individuals within a planning and service area. Area agency on aging advisory councils shall operate in conformance with applicable federal requirements. The local advisory councils shall meet regularly and provide advice and consultation on issues affecting the provision of services provided locally to older individuals.

9403. To the extent provided for in paragraph (2) of subdivision (a) of Section 18773 of the Revenue and Taxation Code, the Legislature hereby recognizes the Area Agency on Aging Advisory Council of California, comprised of the chairs of the local advisory councils.

CHAPTER 6. HOME-DELIVERED MEALS ACT

9500. This chapter shall be known and may be cited as the Home-Delivered Meals Act.

9501. (a) The department shall allocate any new funds to area agencies on aging based upon the existing intrastate funding formula, but without regard to subdivision (b) of Section 9112.

(b) Funds may be expended by area agencies on aging for any of the following purposes:

(1) To serve older individuals on waiting lists.

(2) To increase the number of days per week that meals are provided under the Home-Delivered Meals Program from five to seven.

(3) To provide modified diets specific to the needs of individuals being served by the Home-Delivered Meals Program.

(4) To establish an active outreach program to ensure that California's elderly are aware of the availability of home-delivered meals services.

(5) For capital outlay to expand the physical capacity of local needs programs to serve unmet need.

(6) To fund transportation costs related to the delivery of home-delivered meals.

(7) To otherwise deal with the unmet home-delivered nutrition needs identified by the area agency on aging in accordance with the criteria developed by the department pursuant to this subdivision.

(c) The department shall encourage area agencies on aging to include in the home-delivered meals programs alternative service models designed to reduce the social isolation of economically and nutritionally disadvantaged older individuals living in residential hotels.

CHAPTER 7. COMMUNITY-BASED SERVICES NETWORK

9530. (a) As part of its role in providing leadership to the area agencies on aging in the development of systems of home- and community-based services to maintain individuals in their own homes or least restrictive home-like environments and to ensure the availability of information and awareness of their benefits, rights, and responsibilities, the department shall contract for an array of state-funded community-based services specified in this division to older individuals and functionally-impaired adults.

(b) It is the intent of the Legislature to facilitate central points of access through integration of the financing and local management of the community-based services programs, specified in Chapter 7.5 (commencing with Section 9540) under the area agencies on aging. Except for any new funds appropriated, the department shall contract for these services in the planning and service areas where the services are currently provided.

(c) It is the intent of the Legislature to ensure that contracts for services specified in Chapter 7.5 (commencing with Section 9540) be awarded through a competitive procurement process, considering factors such as cost and scope of services. Where not otherwise prohibited by state or federal law or regulations, programs may benefit from the economical use of shared resources that are co-located. This chapter shall not prohibit the development or continuation of the co-location of these programs.

9530.5. Consistent with Article 4.05 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9, the Legislature reaffirms the need to restructure the array of categorical programs that offer medical, social, and other support services that are funded and administered by a variety of federal, state, and local agencies. It is in the interest of the state, as a whole, to address the duplication and fragmentation of the long-term care system and the home- and community-based services needs of the elderly and functionally impaired adults. Ideally, individuals needing long-term care should be able to access the health and social services system through a central point of entry, disclose basic demographic information, and be referred to the appropriate sources for assessment, care planning, and purchase of services. As a step towards this ideal, the department should develop, by January, 1998, a plan to expand its state-funded programs statewide, subject to the redirection of funds.

9531. (a) This chapter establishes the Community-Based Services Network.

(b) It is the intent of the Legislature that a Community-Based Services Network be initiated by the department in order to do all of the following:

(1) Locally integrate the state-funded community-based services programs, specified in this division, for older individuals and functionally-impaired adults.

(2) Provide increased local flexibility in setting priorities for the services contained within the six state General Fund programs specified in Sections 9542 to 9547, inclusive.

(3) Contract responsibility for local management of the state-funded community-based services programs specified in Chapter 7.5 (commencing with Section 9540) to participating area agencies on aging.

(c) Each participating area agency on aging shall ensure the continuation of the funding match currently required for the community-based services programs specified in Chapter 7.5 (commencing with Section 9540). The match may consist of either cash or in-kind services.

(d) Each participating area agency on aging shall have responsibility for local program management of the community-based services programs specified in Chapter 7.5 (commencing with Section 9540).

9532. In addition to the definitions already contained in this division, the following definitions apply to this chapter.

(a) "Community-based services programs" means the programs specified in Chapter 7.5 (commencing with Section 9540).

(b) "Community-Based Services Network" means the contracting of state funds and local management responsibility for the community-based services programs specified in Chapter 7.5 (commencing with Section 9540) to area agencies on aging.

(c) "Functionally-impaired adult" means any adult 18 years of age or older, who is at risk of institutional placement due to chronic physical and mental limitations, including impairments caused by organic disorders or diseases, that restrict his or her ability to independently perform personal activities of daily living, who has an inadequate informal or formal support network, and who has to leave his or her home without supportive home- and community-based services.

(d) "Local program management" means the area agency on aging's responsibility to oversee the operation of programs specified in Chapter 7.5 (commencing with Section 9540).

(e) "Participating area agency on aging" means an area agency on aging that contracts with the department pursuant to this chapter.

9533. The department shall be responsible for, but not limited to, all of the following:

(a) Reviewing and approving the Community-Based Services Network component of the area plans of participating area agencies on aging.

(b) Entering into contracts with area agencies on aging to carry out the requirements set forth in this chapter and Chapter 7.5 (commencing with Section 9540) that shall include the requirements set forth in subdivisions (c) and (e) for area agencies local management responsibilities under this division.

(c) Developing the respective responsibilities for the department and participating area agencies on aging.

(d) Developing model language for area agencies on aging to use in their procurement and final contracts with direct service providers.

(e) Enforcing statewide requirements to ensure compliance with the statutes and regulations necessary to carry out the purposes of this chapter and Chapter 7.5 (commencing with Section 9540).

(f) Ensuring that a participating area agency on aging that has not been directly providing the services specified under the programs provided for in Chapter 7.5 (commencing with Section 9540) shall not commence directly providing these services until the department has reviewed and concurred with the area plan or update documentation demonstrating that the area agency can provide a comparable quality of these services at least as economically and at an enhanced benefit to the consumer or that there is not an adequate supply of these services in the affected area.

9534. (a) Contracts between the department and participating area agencies on aging shall be exempt from Chapter 2 (commencing with section 10290) of Part 2 of Division 2 of the Public Contract Code.

(b) For the health insurance counseling and advocacy program, participating area agencies on aging that cover a single planning and service area shall maintain the existing service arrangements during the 1997–98 fiscal year, unless either a contractor terminates the

agreement according to the terms and conditions of the existing contract, the state and area agencies on aging terminate the agreement for legal cause under the terms and conditions of the existing contract, or if state funds cease to be budgeted for the specified services.

(c) For the health insurance counseling and advocacy program, participating area agencies on aging that cover multiple planning and service areas shall enter into mutual agreements or joint powers agreements, or both, to maintain the existing service arrangements for the health insurance counseling and advocacy program for the 1997–98 fiscal year and for one additional year, if needed, but not to extend beyond June 30, 1999, unless either a contractor terminates the agreement according to the terms and conditions of the existing contract, the state and area agency on aging terminate the agreement for legal cause under the terms and conditions of the existing contract, or if state funds cease to be budgeted for the specified services.

(d) For the programs other than the health insurance counseling and advocacy program specified in Chapter 7.5 (commencing with Section 9540), participating area agencies on aging shall maintain the existing service arrangements during the 1997–98 fiscal year, unless either a contractor terminates the agreement according to the terms and conditions of the existing contract, the state and area agency on aging terminate the agreement for legal cause under the terms and conditions of the existing contract, or if state funds cease to be budgeted for the specified services.

(e) For the programs other than the health insurance counseling and advocacy program specified in Chapter 7.5 (commencing with Section 9540), participating area agencies on aging shall maintain the existing service arrangements during the 1998–99 fiscal year, unless a contractor terminates the agreement according to the terms and conditions of the existing contract, the state and the area agency on aging terminate the agreement for legal cause under the terms and conditions of the existing contract, or state funds cease to be budgeted for the specified services.

(f) Subject to fiscal years specified in subdivisions (b) to (e), inclusive, participating area agencies on aging that elect not to provide the community-based services specified in Chapter 7.5 (commencing with Section 9540) directly, shall provide for the services through contracts awarded on the basis of a competitive proposal or bid process, or both, that is conducted at least once every four years, except that an area agency on aging shall not be required to conduct a full competitive process if all of the following conditions are met:

(1) A request for application is published, and full outreach is conducted to reasonably notify all potential interested parties, such as formal advertisements in trade journals and association publications.

(2) No applicants, in addition to current contractors, respond to the request for application.

(3) Complete documentation of the outreach effort is maintained by the area agency on aging.

(g) Any dispute regarding the procurement of, and the terms and conditions of the direct service contracts procured by the area agency on aging shall be resolved locally, consistent with subdivision (k) of Section 9535, and as specified in the local area agency procurement documents and contracts.

9535. Area agencies on aging shall be responsible for, but not limited to, all of the following:

(a) Contracting with the department to locally manage the community-based programs specified in and in accordance with the requirements of this chapter and Chapter 7.5 (commencing with Section 9540).

(b) Integrating the community-based services programs contracted under this chapter into the local area plan development process.

(c) Where the area agency on aging proposes to redirect funding under this chapter, the area agency shall ensure that it has submitted its recommendations to a locally formed advisory committee, that shall include consumers of long-term care services, representatives of local organizations of seniors, functionally-impaired adults, representatives of employees who deliver direct long-term care services, and representatives of organizations that provide long-term care services. At least one-half of the members of the advisory committee shall be consumers of services provided under this chapter or their representatives.

(d) In addition, where the area agency on aging proposes to redirect funding under this chapter, an administrative action plan shall be developed and shall receive the approval of the area agency's governing board, which shall consider the input received pursuant to subdivision (c). The administrative action plan shall receive the governing board's approval prior to submission to the department for final state approval. The administrative action plan shall be an update to the area plan.

(e) Effective in the 1999–2000 fiscal year, and except for the health insurance counseling and advocacy program, determining which of the community-based services programs specified in Chapter 7.5 (commencing with Section 9540) and contracted under the authority in this chapter will continue to be funded and the amount of funding to be allocated for that purpose.

(f) Subject to Section 9534, providing directly, through contracts with other local governmental entities, or through competitively procured contracts, the community-based services programs.

(g) When required pursuant to Chapter 875 of the Statutes of 1995, and subject to the annual Budget Act, relinquishing funding originally contracted under this chapter and the associated local

management of the community-based services programs, and except for the health insurance counseling and advocacy program, to the long-term care integration pilot program.

(h) Monitoring direct services contract performance and ensuring compliance with the requirements of this chapter and any other relevant state or federal laws or regulations and the nondiscrimination requirements set forth under Article 9.5 (commencing with Section 4135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

(i) Appropriately expending and accounting for all funds associated with this chapter and providing access to all program books of account and other records to state auditors.

(j) Maintaining a systematic means of capturing and reporting to the department all required community-based services program data, specified in paragraph (5) of subdivision (a) of Section 9102.

(k) The governing body of each participating area agency shall establish a process within its area plan for requesting and providing a hearing for the programs specified under this chapter and Chapter 7.5 (commencing with Section 9540). A hearing shall be provided upon the request of either provider whose existing direct services contract is either terminated prior to its expiration date or reduced in scope outside of the state or federal budget process, or any applicant that is not selected in a direct service contract procurement process due to the alleged presence of a conflict of interest, procedural error or omission in solicitation request, or the lack of substantial evidence to support the award.

9535.5. (a) An area agency on aging that assumes new responsibilities under Chapter 7.5 (commencing with Section 9540) and this chapter shall develop a transition plan setting forth the steps to implement these chapters. This plan shall be completed by July 1, 1998, for all programs except the Health Insurance Counseling and Advocacy Program, for which the plan shall be completed by July 1, 1997.

(b) An area agency on aging to which subdivision (a) applies shall provide an opportunity to interested parties, including consumers of long-term care services, representatives of local organizations of seniors and functionally-impaired adults, and representatives of organizations that provide long-term care services, to participate in the development of the transition plan, by submitting comments. A copy of the transition plan shall be made available for public inspection.

(c) At a minimum, the transition plan shall do all of the following:

(1) Specify the steps necessary to implement Chapter 7.5 (commencing with Section 9540) and this chapter locally in the area agency.

(2) Indicate the timeframe for completion of those steps.

(3) Specify the methods to be used throughout the transition period to solicit comments, including how the area agency on aging will use the area plan process to assess the need for services.

(4) Indicate the official responsible for the implementation of the plan.

(d) 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 chaptered prior to January 1, 1999, deletes or extends this date.

9536. (a) The state funds available for the community-based services programs may not be expended for services other than those specified in Chapter 7.5 (commencing with Section 9540), and shall be limited to the state funds appropriated to the department for the implementation of this chapter and Chapter 7.5 (commencing with Section 9540).

(b) Reimbursement for administrative costs incurred by a participating area agency on aging in operating the community-based services network shall not exceed the administrative funding ratio allowed for area agencies on aging under Title III of the federal Older Americans Act (42 U.S.C. Sec. 3001, et seq.), and as specified in the contract.

(c) The funding provided under this chapter may not be used to supplant the local matching requirements of other state and federal programs.

9537. The funding contracted by the department to the participating area agencies on aging under this chapter shall consist of both of the following:

(a) The proportion of local assistance funds appropriated to, and encumbered by, the department for direct services under the community-based services programs specified in Chapter 7.5 (commencing with Section 9540).

(b) The proportion of state operations cost savings realized by the department that are directly attributable to the local management of the community-based services programs specified in Chapter 7.5 (commencing with Section 9540) and any additional funds subsequently appropriated for the administrative costs incurred by the area agencies on aging.

(c) Subject to the annual Budget Act, in no event shall the amount appropriated to the participating area agency on aging for purposes of subdivisions (a) and (b), be less than that appropriated in the base fiscal year of 1997–98.

9538. (a) Persons involved in the procurement or management of services shall not engage in a conflict of interest, real or apparent.

(b) Staff and volunteers shall not engage in the business of insurance or other related activity while associated with the community-based services programs.

(c) For the services covered under the community-based services programs, no area agency or contract officer, employee, or board member shall use the formal names or acronyms for the services

except in conjunction with the provision of covered services, official duty, and participation in specifically sanctioned events.

(d) No information concerning any individual that is acquired by the department, the area agencies on aging, or service providers in the administration and delivery of community-based services specified in Chapter 7.5 (commencing with Section 9540), including the fact that an individual has sought or received services, shall be disclosed without the informed written consent of the individual to whom the information applies or unless pursuant to court order, after noticed hearing, irrespective of whether the person or party seeking disclosure already has the information, has other means of obtaining the information, had obtained a subpoena to obtain the information, or asserts any other basis or justification for disclosure of the information. Nothing in this subdivision shall preclude the exchange of information between the department, the area agencies on aging, and service providers which is necessary for the effective state and local administration and oversight of the programs involved, or the sharing of information with state licensing and certification agencies or law enforcement entities when the information is necessary for the performance of their respective duties.

CHAPTER 7.5. COMMUNITY-BASED SERVICES PROGRAMS

9540. It is the intent of the Legislature to ensure that older individuals and functionally impaired adults receive needed services that will enable them to maintain the maximum independence permitted by their functional ability and remain in their own home or communities for as long as possible. Except where otherwise provided, community-based services programs under the Community-Based Services Network shall meet all of the minimum requirements specified in this chapter.

9541. (a) The Legislature finds and declares that the purpose of the Health Insurance Counseling and Advocacy Program is to provide Medicare beneficiaries and those imminent of becoming eligible for Medicare with counseling and advocacy as to Medicare, private health insurance, and related health care coverage plans, on a statewide basis, and preserving service integrity.

(b) The department shall be responsible for, but not limited to, doing both of the following:

(1) To act as a clearinghouse for information and materials relating to Medicare, managed care, health and long-term care related life and disability insurance, and related health care coverage plans.

(2) To develop additional information and materials relating to Medicare, managed care, and health and long-term care related life and disability insurance, and related health care coverage plans, as necessary.

(c) Notwithstanding the terms and conditions of the contracts, direct services contractors shall be responsible for, but not limited to, all of the following:

(1) Community education to the public on Medicare, long-term care planning, private health and long-term care insurance, managed care, and related health care coverage plans.

(2) Counseling and informal advocacy with respect to Medicare, long-term care planning, private health and long-term care insurance, managed care, and related health care coverage plans.

(3) Referral services for legal representation or legal representation with respect to Medicare appeals, Medicare related managed care appeals, and life and disability insurance problems. Legal services provided under this program shall be subject to the understanding that the legal representation and legal advocacy shall not include the filing of lawsuits against private insurers or managed health care plans. In the event that legal services are contracted for by the agency separately from counseling and education services, a formal system of coordination and referral from counseling services to legal services shall be established and maintained.

(4) Educational services supporting long-term care educational activities aimed at the general public, employers, employee groups, senior organizations, and other groups expressing interest in long-term care planning issues.

(5) Educational services emphasizing the importance of long-term care planning, promotion of self-reliance and independence, and options for long term care.

(6) To the extent possible, support additional emphasis on community educational activities that would provide for announcements on television and in other media describing the limited nature of Medicare, the need for long-term care planning, the function of long-term care insurance, and the availability of counseling and educational literature on those subjects.

(7) Recruitment, training, coordination, and registration, with the department, of health insurance counselors, including a large contingent of volunteer counselors designed to expand services as broadly as possible.

(8) A systematic means of capturing and reporting all required community-based services program data, as specified by the department.

(d) Participants who volunteer their time for the health insurance counseling and advocacy program may be reimbursed for expenses incurred, as specified by the department.

(e) The department, the Department of Corporations, and the Department of Insurance shall jointly develop interagency procedures for referring and investigating suspected instances of misrepresentation in advertising or sales of services provided by Medicare, managed health care plans, and life and disability insurers and agents.

(f) (1) No health insurance counselor shall provide counseling services under this chapter, unless he or she is registered with the department.

(2) No registered volunteer health insurance counselor shall be liable for his or her negligent act or omission in providing counseling services under this chapter. No immunity shall apply to health insurance counselors for any grossly negligent act or omission or intentional misconduct.

(3) No registered volunteer health insurance counselor shall be liable to any insurance agent, broker, employee thereof, or similarly situated person, for defamation, trade libel, slander, or similar actions based on statements made by the counselor when providing counseling, unless a statement was made with actual malice.

(4) Prior to providing any counseling services, health insurance counselors shall disclose, in writing, to recipients of counseling services pursuant to this chapter that the counselors are acting in good faith to provide information about health insurance policies and benefits on a volunteer basis, but that the information shall not be construed to be legal advice, and that the counselors are, generally, not liable unless their acts and omissions are grossly negligent or there is intentional misconduct on the part of the counselor.

(5) The department shall not register any applicant under this section unless he or she has completed satisfactorily training which is approved by the department, and which shall consist of not less than 24 hours of training that shall include, but is not limited to, all of the following subjects:

(A) Medicare.

(B) Life and disability insurance.

(C) Managed care.

(D) Retirement benefits and principles of long-term care planning.

(E) Counseling skills.

(F) Any other subject or subjects determined by the department to be necessary to the provision of counseling services under this chapter.

(6) The department shall not register any applicant under this section unless he or she has completed all training requirements and has served an internship of co-counseling of not less than 10 hours with an experienced counselor and is determined by the local program manager to be capable of discharging the responsibilities of a counselor. An applicant shall sign a conflict of interest and confidentiality agreement, as specified by the department.

(7) A counselor shall not continue to provide health insurance counseling services unless he or she has received continuing education and training, in a manner prescribed by the department, on Medicare, managed care, life and disability insurance, and other subjects during each calendar year.

9542. (a) The Legislature finds and declares that the purpose of the Alzheimer's Day Care-Resource Center Program is to provide access to specialized day care resource centers for individuals with Alzheimer's disease and other dementia-related disorders and support to their families and caregivers.

(b) The following definitions shall govern the construction of this section:

(1) "Participant" means an individual with Alzheimer's disease or a disease of a related type, particularly the participant in the moderate to severe stages, whose care needs and behavioral problems may make it difficult for the individual to participate in existing care programs.

(2) "Other dementia-related disorders" means those irreversible brain disorders that result in the symptoms described in paragraph (3). This shall include, but is not limited to, multi-infarct dementia and Parkinson's disease.

(3) "Care needs" or "behavioral problems" means the manifestations of symptoms that may include, but need not be limited to, memory loss, aphasia (communication disorder), becoming lost or disoriented, confusion and agitation, with the potential for combativeness, and incontinence.

(4) "Alzheimer's day care resource center" means a center developed pursuant to this section to provide a program of specialized day care for participants with dementia.

(c) The department shall adopt policies and guidelines to carry out the purposes of this section, and the adoption thereof 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.

(d) In order to be eligible to receive funds under this section, a direct services contract applicant shall do all of the following:

(1) Provide a program and services to meet the special care needs of, and address the behavioral problems of, participants.

(2) Provide adequate and appropriate staffing to meet the nursing, psychosocial, and recreational needs of participants.

(3) Provide physical facilities that include the safeguards necessary to protect the participants' safety.

(4) Provide a program for assisting individuals who cannot afford the entire cost of the program. This may include, but need not be limited to, utilizing additional funding sources to provide supplemental aid and allowing family members to participate as volunteers at the applicant's facility.

(5) Utilize volunteers and volunteer aides and provide adequate training for those volunteers.

(6) Provide a match of not less than 25 percent of the direct services contract amount consisting of cash or in-kind contributions, identify other potential sources of funding for the applicant's facility, and outline plans to seek additional funding to remain solvent.

(7) Maintain family and caregiver support groups.

(8) Encourage family members and caregivers to provide transportation to and from the applicant's facility for participants.

(9) Concentrate on participants in the moderate to severe ranges of disability.

(10) Provide or arrange for a noon meal to participants.

(11) Establish contact with local educational programs, such as nursing and gerontology programs, to provide onsite training to students.

(12) Provide services to assist family members, including counseling and referral to other resources.

(13) Serve as model centers available to other service providers for onsite training in the care of these patients.

(14) Involve the center in community outreach activities and provide educational and informational materials to the community.

(15) Maintain a systematic means of capturing and reporting all required community-based services program data.

(e) Notwithstanding any provision of the Health and Safety Code, direct services contractors that are not already licensed shall be exempt from licensure requirements under this division and shall be subject exclusively to this chapter.

(f) Nothing in this chapter shall be construed to prevent existing adult day care services, including adult day health care centers, from developing a specialized program under this chapter. The applicants shall meet all of the requirements for direct services contractors in this chapter and satisfactorily demonstrate that the direct services contract funding award shall be used to develop a distinct specialized program for this target population.

9543. (a) The Legislature finds and declares that the purpose of the Brown Bag Program shall be to provide opportunities for sponsors and volunteers to glean through excess foodstuffs that are donated, and distribute bags of food to help meet the nutritional needs of low-income older individuals.

(b) For purposes of this section "low-income older individual" means a person 60 years of age or older, with an income no higher than that of the annual basic benefit level provided under the State Supplementary Program for a blind applicant or recipient pursuant to subdivision (a) of Section 12200.

(c) In order to be eligible to receive funds under this chapter, a direct services contract applicant shall meet, but need not be limited to, all of the following conditions:

(1) Provide a cash match of 25 percent and an in-kind match of 25 percent prior to receiving funds under Chapter 7 (commencing with Section 9530) and this chapter.

(2) Use matching sources that are derived from, but are not limited to, city, county, and federal funds, contributions, and private or business donations. Priority shall be given to those local programs with a larger local match. State money shall be used as a catalyst for

charitable contributions, including in-kind and local community support.

(3) Operate under a board of directors, with at least one low-income older individual as a representative, and other interested persons from the community.

(4) Provide adequate space to store food with necessary access to refrigerator and freezer storage.

(5) Utilize volunteers to distribute produce and unsold foodstuffs to low-income older individuals.

(6) Maintain a systematic means of capturing and reporting all required community-based services program data.

(d) Food distributed to seniors shall comply with county health regulations. Except for any injury resulting from gross negligence or willful act, no county or county agency established pursuant to this chapter and no person who donates any agricultural product shall be liable for any injury, including, but not limited to, injury resulting from the ingesting of the product, as a result of any act, or the omission of any act, in connection with donating any product pursuant to this chapter.

9544. (a) The Legislature finds and declares that the purpose of the Foster Grandparent Program shall be to provide personally meaningful volunteer community service opportunities to low-income older individuals through mentoring children with exceptional physical, developmental, or behavioral needs in accordance with the federal National and Community Service Trust Act of 1993 (42 U.S.C. Sec. 12651 et seq.).

(b) For purposes of this section, "foster grandparent volunteer" means an individual who is 60 years of age or older has an insufficient income, as determined in accordance with Part 1208 of Title 45 of the Code of Federal Regulations, and provides at least four hours a day, five days a week of foster grandparent services under this chapter.

(c) Direct service contractors shall meet all of the following requirements:

(1) Be a city, county, city and county, or department of the state, or any suitable private, nonprofit organization, that demonstrates the ability to provide the specified services in a variety of settings, including, but not limited to, hospital pediatric wards, facilities for the physically, emotionally, or mentally impaired, correctional facilities, schools, day care centers, and residences.

(2) Recruit, select, train, and assign staff and volunteers.

(3) Provide volunteer participants with the same benefits, transportation, stipends, and income exemptions as provided to the foster grandparent volunteers funded through the Corporation for National Service.

(4) Provide or arrange for meals, transportation, and supervision for volunteers.

(5) Provide benefits and meaningful volunteer service opportunities to low-income individuals 60 years of age and older.

(6) Serve children under 21 years of age, who have special needs, or are deprived of normal relationships with adults.

(7) Provide services to, but not limited to, any of the following:

(A) Premature and failure-to-thrive babies, abused, neglected, battered, and chronically ill children in hospital.

(B) Autistic children, children with cerebral palsy and developmentally disabled children placed in institutions for the developmentally disabled.

(C) Physically impaired children, mentally disabled children, emotionally disturbed children, developmentally disabled children, and children who are socially and culturally deprived in school settings and child care centers, dependent children, neglected children, mentally disabled children, emotionally disturbed or physically impaired children, battered and abused children in residential settings.

(D) Delinquent children and adolescents in correctional institutions.

(E) Children under 19 years of age, when the child has been charged with committing, or adjudged to have committed, an offense which is the equivalent to, a misdemeanor.

(8) Maintaining a systematic means of capturing and reporting all required community-based services program data.

(c) In addition to the opportunity to help children who have exceptional physical, developmental or behavioral needs and are deprived of normal relationships with adults, foster grandparent volunteers shall receive all of the following:

(1) Expenses for transportation to and from their homes and the place where they render their services or may have transportation in buses or in other transportation made available to them.

(2) One free meal during each day in which the foster grandparent renders services.

(3) Accident insurance, an annual physical examination, and a nontaxable hourly stipend.

9545. (a) The Legislature finds and declares that the purpose of the Linkages Program shall be to provide comprehensive and timely information, one-time-only assistance in securing community services when deemed necessary or desirable, and short-term specialized assistance and case management services to assist the frail elderly and functionally-impaired adults to remain as independent as possible for as long as possible in their communities.

(b) Notwithstanding the terms and conditions of the existing contracts, direct services contracts shall be responsible for providing, but not limited to, the following:

(1) Comprehensive and timely information, when necessary, to individuals and their families about the availability of community resources to assist functionally impaired adults and the frail elderly to maintain the maximum independence permitted by their functional ability.

(2) One-time-only assistance in securing community services when deemed necessary or desirable in order to assure timely receipt of the needed services to help maintain maximum independence of a frail older person or functionally impaired adult.

(3) Short-term specialized assistance, including counseling and the arrangement of an action plan, when there is a temporary probable threat to the ability of the frail elderly person or functionally impaired adult to remain in the most independent living arrangement permitted by his or her functional ability.

(4) Ongoing care or case management to frail elderly and functionally impaired adults to help prevent or delay placement in nursing facilities. For purposes of this paragraph, "care or case management" means all of the following:

(A) Client assessment, in conjunction with the development of a service plan with the participant and other appropriate persons, to provide for needs identified by the assessment.

(B) Authorization and arrangement for the purchase of services, or referral, with followup, to volunteer, informal, or third-party payer services.

(C) Service and participant monitoring to determine that the services obtained are appropriate to need, of acceptable quality, and provided in a timely manner.

(D) Followup with clients, including periodic contact and initiation of an interim assessment, if deemed necessary, prior to scheduled reassessment.

(5) Assistance to older individuals entering or returning home from nursing facilities and who need help to make the transition.

(6) Experience in community long-term care services and capability to serve the frail elderly and functionally-impaired adults, and where applicable, ensure separateness of the programs and demonstrate protective measures to avoid conflict of interest.

(7) A systematic means of capturing and reporting all required community-based services program data.

(c) Contractors shall maximize to the fullest extent possible the use of existing services resources before using program funds to purchase services for clients. Any benefits received as a result of these purchases either shall not be considered income for purposes of programs provided for under Division 9 (commencing with Section 10000) or shall not be considered an alternative resource pursuant to Section 12301.

(d) (1) Each county shall deposit funds collected pursuant to Section 1465.5 of the Penal Code in its general fund, to be available for use only for the support of services provided under this chapter in that county, including county administrative costs not exceeding 10 percent of the funds collected, except as otherwise provided in this subdivision. A county may join with other counties to establish and fund a program of services under this chapter.

(2) Funds utilized pursuant to this section shall not supplant, be offset against, or in any way reduce funds otherwise appropriated for the support of services provided under this chapter.

9546. (a) The purpose of the Respite Program shall be to provide temporary or periodic services for frail elderly or functionally impaired adults to relieve persons who are providing care, or recruitment and screening of providers and matching respite providers to clients.

(b) Direct services contractors shall do either one or more of the following:

(1) In acting as a respite care information and referral agency, recruiting and screening respite providers and matching respite providers to clients. Respite care registries shall consist of the names, addresses, and telephone numbers of providers, including, but not limited to, individual caregivers, volunteers, adult day care services, including adult day health care services and services provided by licensed residential care facilities for the elderly.

(2) Arranging for and purchasing respite services for program participants.

(3) Maintaining a systematic means of capturing and reporting all required community-based services program data.

9547. (a) The purpose of the Senior Companion Program shall be to provide personally meaningful volunteer community service opportunities to low-income older individuals for the benefit of adults who need assistance in their daily living. It is the purpose of this chapter to enable older individuals to provide care and support on a person-to-person basis to adults with special needs such as the frail elderly, physically impaired adults and those adults who are mentally or neurologically impaired, in accordance with the National and Community Service Trust Act of 1993 (42 U.S.C. Sec. 12651, et seq.).

(b) For the purposes of this chapter "senior companion volunteer" means an older individual who is 60 years of age or older, has an insufficient income, as determined in accordance with Part 1208 of Title 45 of the Code of Federal Regulations, and provides at least four hours a day, five days a week, of senior companion services under this chapter.

(c) Requirements of direct service contractors:

(1) Be a city, county, city and county, or department of the state, or any suitable private, nonprofit organization, that demonstrates the ability to provide the specified services in a variety of settings, including, but not limited to, in residential, nonresidential, institutional and in-home settings.

(2) Demonstrate the ability to recruit, select, train, and assign staff and volunteers.

(3) Provide volunteer participants with the same benefits, transportation, stipends, and income exemptions as provided to the senior companion volunteers funded through the Corporation for National Service.

(4) Provide or arrange for meals, transportation, and supervision for volunteers.

(5) Provide benefits and meaningful volunteer service opportunities to low-income individuals 60 years of age or older.

(6) Serve adults who are frail and have functional impairments.

(7) Provide services to, but not limited to, all of the following:

(A) Older individuals who were either formerly active and are now bedfast, too frail, or too ill to be transported to special programs.

(B) Physically impaired older individuals who cannot leave their homes due to the extent of their disabilities.

(C) Individuals who, due to functional impairments, fear of a fast-moving society, and the possibility of bodily harm, are afraid to go out.

(D) Physically impaired individuals who are capable of interacting in activities for the physically impaired, but because of their limitations have been overprotected by their guardians.

(E) Physically or mentally impaired older individuals who have become so depressed that they have withdrawn from all social interaction and are confined as a result of psychological problems.

(F) Physically impaired individuals who are anxious to be enrolled in day care programs, but have to stay on waiting lists until there is an opening.

(8) Maintain a systematic means of capturing and reporting all required community-based services program data.

(d) In addition to the opportunity to help other adults who have special needs, such as the frail elderly, physically impaired adults and those adults who are mentally or neurologically impaired, senior companion volunteers shall receive all of the following:

(1) Expenses for transportation to and from their homes and the place where they render their services or transportation in buses or in other transportation made available to them.

(2) One free meal during each day in which the senior companion renders services.

(3) Accident insurance, an annual physical examination, and a nontaxable hourly stipend.

(e) Senior companions funded under this chapter shall not be assigned to individuals already receiving in-home supportive services.

CHAPTER 8. MULTIPURPOSE SENIOR SERVICES PROGRAM

9560. (a) The purpose of this chapter shall be to establish a program to serve frail elderly individuals 65 years of age and older who are certifiable for placement in a nursing facility. This program shall be known as the Multipurpose Senior Services Program, and shall be structured and carried out in a manner consistent with Section 1396n(c) of Title 42 of the United States Code.

(b) This chapter clarifies the intent of the Legislature that the Multipurpose Senior Services Program shall continue:

(1) To prevent premature disengagement of older individuals from their indigenous communities and subsequent commitment to institutions.

(2) To provide optimum accessibility of various important community social and health resources available to assist active older individuals to maintain independent living.

(3) To provide that the frail older individual who has the capacity to remain in an independent living situation has access to the appropriate social and health services without which independent living would not be possible.

(4) To provide the most efficient and effective use of public funds in the delivery of these social and health services.

(5) To coordinate, integrate, and link these social and health services, including county social services, by removing obstacles which impede or limit improvements in delivery of these services.

(6) To allow the state substantial flexibility in organizing or administering the delivery of social and health services to its older individuals.

9561. Program services provided pursuant to this chapter may be purchased by program funds or received from other community sources that consist of, but are not limited to, case management services, recreation services, educational services, senior center programs, information and referral services, transportation, income maintenance counseling, housing services, outreach services, volunteer programs, legal services, home repair services, escort services, telephone reassurance services, friendly visiting services, health assessment services, psychological assessment services, nutrition services, home health services, preventive health services, mental health services, homemaker chore services, meals services, adult day care services, including adult day health care, and nonmedical respite care services.

9562. (a) This chapter shall be administered by the department, under the authority of an approved interagency agreement with the State Department of Health Services, the single state medicaid agency.

(b) To the extent permitted by federal law, each department within the Health and Welfare Agency including departments designated as single state agencies for the programs described in Section 9561, shall waive regulations and general policies and make resources available which are necessary for the administration of this chapter, upon request of the agency.

9563. The department shall formulate criteria for approval and designation of local Multipurpose Senior Services Program sites. The criteria shall include, but need not be limited to, all of the following:

(a) Specifications for a social and health review team to evaluate older individuals and to ensure that continuity of social, economic,

and health services is provided to maintain older individuals at the appropriate level of care.

(b) Development of social and health services necessary to maintain the older individual at the appropriate level of care.

(c) Specifications for the quality of the social and health services to be provided.

(d) Coordination and integration of the social and health services described in Section 9561.

(e) The number of local sites, which shall be consistent with the moneys made available for purposes of this chapter.

(f) Coordination with local governmental agencies concerned with multipurpose senior services.

(g) Specifications for the evaluation of the proposals submitted for the new local sites and for the evaluation of the local sites.

9564. Nothing in this chapter shall preclude expansion of Multipurpose Senior Services Program services if cost-effectiveness is demonstrated. The expansion shall be through increasing numbers of clients served in individual sites or through expansion of the number of sites to include additional geographic regions of the state.

9565. The department shall do all of the following:

(a) Enter into agreements and negotiated contracts with any nonprofit organization or governmental entity to operate the local sites, consistent with the criteria adopted pursuant to Section 9563. In letting these contracts, the department shall not anticipate future appropriations.

(b) Make grants to local sites from available funds.

(c) Monitor local sites.

(d) Cause the service sites to be evaluated in accordance with the established criteria.

(e) Seek and utilize any available federal, state, or private funds that may be available for carrying out the purposes of this chapter.

(f) Notwithstanding any other provision of law, local sites established pursuant to this chapter may contract with the Director of Health Services as Medi-Cal programs pursuant to Chapter 8 (commencing with Section 14200) of Part 3 of Division 9. Contracts with the local sites shall be deemed to be for the purposes specified in Section 14494, and may utilize funds appropriated from the Health Care Deposit Fund pursuant to Section 14157.

(g) Assist in coordinating local site programs with local governmental programs and services for older individuals.

9566. The department may, where necessary to ensure the effective operation of a multipurpose senior services program, advance to the program's local government and private nonprofit administering agency, an amount not to exceed 25 percent of the estimated annual allocation to the program, under this chapter, as determined by the department pursuant to the estimated annual budget submitted by the program. Subsequent payments to the local government and private nonprofit administering agency for the

Multipurpose Senior Services Program shall be prorated to reflect any advance payment made under this section.

9567. This chapter shall remain in effect so long as a waiver pursuant to Section 1396n(c) of Title 42 of the United States Code has been granted by the federal Department of Health and Human Services to the State Department of Health Services.

9568. The department shall explore options for, and obtain necessary legislative and governmental agency approvals to expand, the Multipurpose Senior Services Program. The department shall attempt to obtain the necessary federal approval to expand access to case management services into every planning and service area in the state and to improve the delivery of case management services.

CHAPTER 9. SENIOR CENTER BOND ACT OF 1984

9590. This chapter shall be known and may be cited as the Senior Center Bond Act of 1984.

9591. The following definitions shall govern the construction of this chapter:

(a) "Acquiring" means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a senior center.

(b) "Altering" or "renovating" means making modifications to an existing facility that are necessary for cost-effective use as a senior center, including restoration, repair, expansion, and all related physical improvements.

(c) "Area agency" means the area agency on aging designated in a planning and service area to develop and administer the area plan for a comprehensive and coordinated system of services for older individuals.

(d) "Board" means the California Department of Aging.

(e) "Bond" means a state general obligation bond issued pursuant to this chapter adopting the provisions of the State General Obligation Bond Law.

(f) "Committee" means the Senior Center Finance Committee.

(g) "Constructing" means building a new facility, including the costs of land acquisition and architectural and engineering fees.

(h) "Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of three hundred dollars ($300) or more.

(i) "Fund" means the Senior Center Bond Act Fund of 1984.

(j) "Multipurpose senior center" means a community facility with regular operating hours and staff that provides for a broad spectrum of health, social, nutritional, and educational services and recreational activities for older individuals.

(k) "Nonprofit" means an institution or organization that is owned and operated by one or more corporations or associations, with no part of the net earnings benefiting any private shareholder or individual.

(*l*) "Planning and service area" means a geographic area that is designated for purposes of planning, development, delivery, and overall administration of services under an area plan.

(m) "Program" means one of the service components provided for older individuals in a senior center.

(n) "Senior center" means a community focal point on aging, where older individuals as individuals or in groups come together for services and activities which enhance their dignity, support their independence, and encourage their involvement in and with the community. Senior center programs consist of a variety of services and activities in areas, such as education, creative arts, recreation, advocacy, leadership development, employment, health, nutrition, social work, and other supportive services.

(o) "Startup costs" means a one-time capital outlay to fund programs in a newly constructed senior center, a one-time capital outlay to fund additional programs in an existing senior center, or initial service delivery costs.

9592. There is hereby created in the State Treasury the Senior Center Bond Act Fund, which is comprised of moneys collected pursuant to the issuance and sale of bonds pursuant to this chapter. The Senior Center Bond Act Fund is hereby appropriated to the Controller, without regard to fiscal years, for allocation, upon the request of the director, for the purposes specified in this chapter.

9593. The department shall make awards from funds derived from this bond act to public or private nonprofit agencies for the purpose of acquiring, renovating, constructing, and purchasing of equipment for senior centers, or funding startup costs of programs, or program expansion of senior center programs.

9594. Eligible applicants for funding under this chapter include units of general purpose local government or other nonprofit private agencies or organizations, including the State of California or area agencies on aging.

9595. (a) A recipient of a contract for the acquisition of a facility to be used as a senior center shall assure that the facility will be used for that purpose for at least 10 years from the date of acquisition.

(b) A recipient of a contract for the renovation of an existing facility to be used as a senior center shall assure the department that the facility will be used for that purpose for the following periods:

(1) Not less than three years from the date the contract terminates, where the amount of the award does not exceed thirty thousand dollars ($30,000).

(2) If the award exceeds thirty thousand dollars ($30,000), the fixed period of time shall increase one year for each additional ten thousand dollars ($10,000) or part thereof, to a maximum of seventy-five thousand dollars ($75,000).

(3) For awards which exceed seventy-five thousand dollars ($75,000), the fixed period of time shall not be less than 10 years.

(c) A recipient of a contract for the construction of a facility to be used as a senior center shall assure the department the facility will be used for that purpose for at least 20 years after completion of construction.

9596. (a) The State of California shall be entitled to recapture a portion of state funds from the owner of a facility, if within 10 years after acquisition or 20 years after completion of construction, either of the following occurs:

(1) The owner of the facility ceases to be a public or nonprofit agency.

(2) The facility is no longer used for senior center activities.

(b) The amount recovered shall be that proportion of the current value of the facility equal to the proportion of state funds contributed to the original cost. The current value of the facility shall be determined by an agreement between the owner of the facility and the State of California, or by an action in the court in the jurisdiction in which the facility is located.

9597. A facility altered, acquired, renovated, constructed, or equipped using funds allocated under this chapter to be used for a senior center facility may not be used and may not be intended to be used for sectarian instruction or as a place for religious worship.

9598. In a senior center facility that is shared with other age groups, funds received under this chapter may support only the following:

(a) That part of the facility used by older individuals.

(b) A proportionate share of the costs based on the extent of use of the facility by older individuals.

9599. Proposals shall do all of the following:

(a) Document the need for a senior center or renovation, program addition, or expansion or equipment purchase.

(b) Contain a written commitment from service providers that services will be provided in the senior center.

(c) Contain a community match for funding equal to 15 percent of the total amount requested. The match may be in cash or in kind. Each area agency shall waive the community match upon verifying that the low-income or rural community made a substantial effort to secure a match, but still was unable to secure the required match.

(d) Document the cost-effectiveness of the proposal.

9600. (a) Priority for funding shall be given to proposals for multipurpose senior centers that are open to all seniors. Each area agency shall rank the proposals it submits to the department for funding. The area agency, together with its advisory council, in ranking the proposals shall consider the most feasible facilities to serve as senior centers and the most qualified local agencies to operate the programs in those centers in their jurisdictions. Approval from the area agency shall be obtained before any contract is awarded in its jurisdiction.

(b) The department and each area agency shall also give priority consideration to fund proposals that are from rural or low-income and racial or ethnic minority areas of the state.

(c) The department shall consider any protest or objection regarding the award of a contract, whether submitted before or after the award, provided that the protest is filed within the time period established in the request for proposals. All protests or objections shall be filed in writing. The protesting party shall be notified in writing of the final decision on the protest, and the notification shall set forth the rationale upon which the decision is based.

9601. Funds not utilized by each planning and service area shall be reallocated to other planning and service areas with the highest documented need for a senior center.

9602. The State General Obligation Bond Law is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued pursuant to this chapter, and the provisions of that law are included in this chapter as though set out in full in this chapter.

9603. For the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized in this chapter, the Senior Center Finance Committee is hereby created. The committee consists of the Treasurer, the Controller, the Director of Finance, and the director. The committee is hereby authorized and empowered to create a debt or debts, or liability or liabilities, of the State of California, in the aggregate amount of fifty million dollars ($50,000,000), in the manner provided in this chapter. The debt or debts, or liability or liabilities shall be created for the purpose of acquiring, renovation, constructing, purchasing of equipment, funding startup costs of programs, or funding expansion of existing programs of senior centers. When sold, the bonds authorized by this chapter shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereon. There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state, as shall be required to pay the interest and principal on the bonds maturing each year, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that shall be necessary to collect that additional sum. All money deposited in the fund that has been derived from premium and accrued interest on bonds sold shall be available for transfer to the General Fund as a credit to expenditures for bond interest. All money deposited in the fund pursuant to any provision of law requiring repayments to the state for assistance financed by the proceeds of the bonds authorized by this chapter shall be available for transfer to the General Fund. When transferred to the General Fund, this money shall be applied

as a reimbursement to the General Fund on account of principal and interest on the bonds paid from the General Fund.

9604. There is hereby appropriated from the General Fund in the State Treasury for the purpose of this chapter, an amount as will be equal to the following:

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

(b) That sum as is necessary to carry out Section 9603, which sum is appropriated without regard to fiscal years.

9605. (a) For purposes of carrying out this chapter, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the board in accordance with this chapter. These withdrawals from the General Fund shall be returned to the General Fund with interest at the rate which would have otherwise been earned by these sums in the Pooled Money Investment Fund.

(b) The committee may authorize the Treasurer to sell all or any part of the bonds authorized by this chapter at the time or times as may be fixed by the Treasurer.

(c) All proceeds from the sale of bonds, except those derived from premiums and accrued interest, shall be available for the purpose provided in Section 9592 but shall not be available for transfer to the General Fund to pay principal and interest on bonds. The money in the fund may be expended only as provided in this chapter.

CHAPTER 10. AGING INFORMATION AND EDUCATION

9630. As part of its role in providing leadership in advocating on behalf of older individuals, the department shall make efforts to increase public awareness about areas of importance to California's older individuals, their families, and other caregivers. These efforts to increase public awareness and education may be accomplished through the use of public service announcements, radio and television commercials or infomercials, access on the internet, newspaper and other periodical editorials and letters to the editor, public and corporate symposiums, and mass transit and outdoor signage.

9631. (a) The department shall establish an Aging Information and Education Fund, from funds made available pursuant to the annual Budget Act, to implement public awareness of various issues, including at least the following areas:

(1) Medication management - to call attention to the large percentage of older individuals admitted to hospitals solely due to the mismanagement of prescribed and over-the-counter drugs, the need

for proper and timely use of medications, and the role of the attending physicians in prescribing medications and their interactive potential for harm.

(2) Elder abuse prevention - to work in conjunction with state and local law enforcement entities to bring focus to the need to protect older individuals from physical, emotional, and fiduciary abuse, so that they may continue to live with peace of mind about their safety.

(3) Toll-free line for linkage to local service networks - to develop and make the public aware of a single statewide toll-free telephone number for access to local information about services available to the community for older individuals and persons with functional impairments.

(b) The sources of funding that may be used for this purpose include any nonprofit foundation, privately donated by individuals, and one-time-only state or federal-state operations funds. Nothing in this chapter shall be construed to authorize any expenditures that are not otherwise allowable by the originating source of the funding.

CHAPTER 11. STATE OMBUDSMAN

Article 1. Legislative Intent and Definitions

9700. (a) The Legislature recognizes that the department, pursuant to a grant from the federal government, has established a Long-Term Care Ombudsman Program.

(b) The Legislature declares that it is the public policy of this state to encourage community contact and involvement with elderly patients or residents of long-term care facilities or residential facilities through the use of volunteers and volunteer programs, and nothing in this chapter shall be construed as limiting or restricting the continuation of relationships established between ombudsmen, the elderly patients or residents of long-term care facilities or residential facilities, and the operators of these facilities.

(c) The Legislature finds that in order to comply with the federal Older Americans Act (42 U.S.C. Sec. 3001, et seq.), as amended, and to effectively assist residents, patients, and clients of long-term care facilities in the assertion of their civil and human rights, the structure, powers, and duties of the Long-Term Care Ombudsman Program must be specifically defined.

9701. Unless the contrary is stated or clearly appears from the context, the following definitions shall govern the interpretation of this chapter:

(a) "Approved organization" means any public agency or other appropriate organization that has been designated by the department to hear, investigate, and resolve complaints made by or on behalf of patients, residents, or clients of long-term care facilities relating to matters that may affect the health, safety, welfare, and rights of these patients, residents, or clients.

(b) "Long-term care facility" means any of the following:

(1) Any nursing or skilled nursing facility, as defined in Section 1250 of the Health and Safety Code, including distinct parts of facilities that are required to comply with licensure requirements for skilled nursing facilities.

(2) Any residential care facility for the elderly as defined in Section 1569.2 of the Health and Safety Code.

(c) "Medical training" or "medical records training" means the completion of training as a physician, registered nurse, nurse practitioner, licensed vocational nurse, pharmacist, medical social worker, medical records technician, physician's assistant, or discharge planner.

(d) "Office" means the Office of the State Long-Term Care Ombudsman, including approved organizations.

(e) "Ombudsman coordinator" means the individual selected by the governing board or executive director of the approved organization to manage the day-to-day operation of the ombudsman program, including the implementation of federal and state requirements governing the office.

(f) "Resident," "patient," or "client" means an older or elderly individual residing in a long-term care facility.

(g) "State Ombudsman" means the State Long-Term Care Ombudsman.

Article 2. General Provisions

9710. There is within the department an Office of the State Long-Term Care Ombudsman.

9711. (a) The office shall be under the direction of a chief executive officer who shall be known as the State Long-Term Care Ombudsman. The State Ombudsman shall be appointed by the director and shall report directly to the director. He or she shall devote his or her entire time to the duties of his or her position, and shall receive the salary otherwise provided by law.

(b) Any vacancy occurring in the position of State Ombudsman shall be filled in the same manner as the original appointment. Whenever the State Ombudsman dies, resigns, becomes ineligible to serve for any reason, or is removed from office, the director shall appoint an acting State Ombudsman within 30 days, who shall serve until the appointment and qualification of the State Ombudsman's successor, but in no event longer than four months from the occurrence of the vacancy. The acting State Ombudsman shall exercise during this period all the powers and duties of the State Ombudsman pursuant to this chapter.

9712. (a) The State Ombudsman shall have training and experience in all of the following areas:

(1) Gerontology, long-term care, or other relevant social services programs.

(2) The legal system.

(3) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

(b) The State Ombudsman shall not have been employed by any long-term care facility within the three year period immediately preceding this appointment.

(c) Neither the State Ombudsman nor any member of his or her immediate family shall have, or have had within the past three years, any pecuniary interest in long-term health care facilities.

9713. (a) Upon request of the office, the Attorney General shall represent the office or the department and the state in litigation concerning affairs of the office, unless the Attorney General represents another state agency, in which case the agency or the office shall be authorized to employ other counsel.

(b) The State Ombudsman may employ technical experts and other employees that, in his or her judgment, are necessary for the conduct of the business of the office.

9714. The office may solicit and receive funds, gifts, and contributions to support the operations and programs of the office. The office may form a foundation eligible to receive tax-deductible contributions to support the operations and programs of the office. The office shall not solicit or receive any funds, gifts, or contributions where the solicitation or receipt would jeopardize the independence and objectivity of the office.

9714.5. (a) The foundation formed pursuant to Section 9714 shall be under the direction and management of a five-member board of directors. One member shall be appointed by the Speaker of the Assembly, one member shall be appointed by the Senate Committee on Rules, and three members shall be appointed by the Governor. The members of the board shall each be experienced in the management, promotion, and funding of nonprofit charitable organizations.

(b) The board shall select from among its members a chair, a vice chair, and any other officers as it deems necessary.

(c) The members of the board shall serve without compensation, but shall be reimbursed for all necessary expenses actually incurred in the performance of their duties as directors.

(d) Three members of the board shall constitute a quorum for the purpose of conducting the board's business.

(e) By July 1 of each year, the board shall determine the amount of funds to be appropriated from the foundation to the office for the support of its operations and programs. Foundation funds may only be appropriated for the support of the operations and programs of the office.

9715. (a) No representative of the office shall be held liable for good faith performance of responsibilities under this chapter.

(b) No discriminatory, disciplinary, or retaliatory action shall be taken against any employee of a facility or agency, any patient,

resident, or client of a long-term care facility, or any volunteer, for any communication made, or information given or disclosed, to aid the office in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith. This subdivision is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(c) All communications by a representative of the office, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, shall be privileged, and that privilege shall serve as a defense to any action in libel or slander.

(d) Any representative of the office shall be exempt from being required to testify in court as to any confidential matters, except as the court may deem necessary to enforce the provisions of this chapter.

9716. The department shall be responsible for activities that promote the development, coordination, and utilization of resources to meet the long-term care needs of older individuals, consistent with its mission. These responsibilities shall include establishing a statewide uniform reporting system to collect and analyze data relative to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The department shall submit the data to the state agency responsible for licensing or certifying long-term care facilities and to the federal agency on aging.

9717. (a) All advocacy programs and any programs similar in nature to the Long-Term Care Ombudsman Program that receive funding or official designation from the state shall cooperate with the office, where appropriate. These programs include, but are not limited to, the Patients' Rights Advocacy Program within the State Department of Mental Health, Protection and Advocacy, Inc., and Department of Rehabilitation Client Assistance Program.

(b) The office shall maintain a close working relationship with the Legal Services Development Program for the Elderly within the department.

(c) In order to ensure the provision of counsel for patients, residents, and clients of long-term care facilities, the department shall seek to establish effective coordination between the office and programs that provide legal services for the elderly, including, but not limited to, programs that are funded by the federal Legal Services Corporation or under the federal Older Americans Act, as amended.

9718. Every long-term care facility, as defined in paragraph (1) of subdivision (b) of Section 9701, shall post in a conspicuous location a notice of the name, address, and phone number of the office and the nearest approved organization, and a brief description of the services provided by the office and the approved organization. The form of the notice shall be approved by the office.

9719. The office shall sponsor a meeting of representatives of approved organizations at least twice each year. The office shall provide training to these representatives as appropriate. Prior to acceptance by the office as designated ombudsmen, individuals shall receive a minimum of 36 hours of training and be approved by the office. Upon acceptance, designated ombudsmen shall receive a card issued by the department identifying the bearer as an official ombudsman. Each ombudsman shall receive a minimum of 12 hours of additional training annually.

9719.5. (a) (1) The department shall allocate all federal and state funds for local ombudsman programs according to the following distribution, but shall not allocate less than thirty-five thousand dollars ($35,000) per fiscal year, except for an area where there are less than 10 facilities and less than 500 beds.

(2) An allocation to an area where there are less than 10 facilities and less than 500 beds shall not be less than the base allocation contained in the Budget Act of 1986.

(3) After the base allocation, remaining funds shall be distributed in accordance with subdivision (b).

(b) (1) Fifty percent of the funds shall be allocated to each local program based on the number of facilities served by the program in proportion to the total number of facilities in the state.

(2) Forty percent of the funds shall be allocated based on the number of beds within the local program's area of service in proportion to the total number of beds in the state.

(3) Ten percent of the funds shall be allocated based on the total square miles within each local program's area of service in proportion to the total number of square miles in the state.

Article 3. Investigation and Resolution of Complaints

9720. (a) The office shall investigate and seek to resolve complaints and concerns communicated by, or on behalf of, patients, residents, or clients of any long-term care facility. This requirement shall not preclude the referral of other individuals' complaints and concerns that a representative becomes aware are occurring in the facility to the appropriate governmental agency. Complaint investigation shall be done in an objective manner to ascertain the pertinent facts.

(b) At the conclusion of any investigation of a complaint, the findings shall be reported to the complainant. If the office does not investigate a complaint, the complainant shall be notified in writing of the decision not to investigate and the reasons for the decision.

9720.5. The office shall give priority to investigations and complaint resolutions in 24-hour long-term care facilities.

9721. (a) The office may refer any complaint to any appropriate state or local government agency. The following state licensing authorities shall give priority to any complaint referred to them by

the office, except that any complaint alleging an immediate threat to resident health and safety may be given first priority:

(1) Licensing and Certification Division of the State Department of Health Services.

(2) Community Care Licensing Division of the State Department of Social Services.

(3) Board of Examiners for Nursing Home Administrators.

(4) Board of Registered Nurses.

(5) Medical Board of California.

(6) Board of Pharmacy.

(7) Board of Vocational Nurse and Psychiatric Technician Examiners.

(b) Any licensing authority that responds to a complaint against a long-term care facility that was referred to the authority by the office shall forward to the office copies of related inspection reports and plans of correction and notify the office of any citations and civil penalties levied against the long-term care facility.

9722. (a) Representatives of the office shall have the right of entry to long-term care facilities for the purpose of hearing, investigating, and resolving complaints by, or on behalf of, and rendering advice to, elderly individuals who are patients or residents of the facilities at any time deemed necessary and reasonable by the State Ombudsman to effectively carry out this chapter.

(b) Nothing in this chapter shall be construed to restrict, limit, or increase any existing right of any organizations or individuals not described in subdivision (a) to enter, or provide assistance to patients or residents of, long-term care facilities.

(c) Nothing in this chapter shall restrict any right or privilege of any patient or resident of a long-term care facility to receive visitors of his or her choice.

9723. The State Ombudsman shall have access to any record of a state or local government agency that is necessary to carry out his or her responsibilities under this chapter, including any record rendered confidential under Section 1094 of the Unemployment Insurance Code or Section 10850.

9724. Notwithstanding Section 56 of the Civil Code, in order for the office to carry out its responsibilities under this chapter, the office shall have access to the medical or personal records of a patient or resident of a long-term care facility that are retained by the facility, under the following conditions:

(a) If the patient or resident has the ability to write, access may only be obtained by the written consent of the patient or resident.

(b) If the patient or resident is unable to write, oral consent may be given in the presence of a third party as witness.

(c) If the patient or resident is under a California guardianship or conservatorship of the person that provides the guardian or conservator with the authority to approve review of records, the

office shall obtain the permission of the guardian or conservator for review of the records, unless any of the following apply:

(1) The existence of the guardianship or conservatorship is unknown to the office or the facility.

(2) The guardian or conservator cannot be reached within three working days.

(3) The office has reason to believe the guardian or conservator is not acting in the best interests of the ward or the conservatee.

(d) If the patient or resident is unable to express written or oral consent and there is no guardian or conservator, or the notification of the guardian or conservator is not applicable for reasons set forth in subdivision (c), inspection of records may be made by full-time state employees of the office ombudsman coordinator, and by ombudsmen qualified by medical training and with the approval of the ombudsman coordinator or the State Ombudsman, when there is sufficient cause for the inspection. The licensee may, at his or her discretion, permit other representatives of the office to inspect records in the performance of their official duties. Copies may be reproduced by the office. The licensee and facility personnel who disclose records pursuant to this subdivision shall not be liable for the disclosure. If investigation of records is sought pursuant to this subdivision, the ombudsman shall, upon request, produce a statement signed by the ombudsman coordinator authorizing the ombudsman to review the records.

(e) Facilities providing copies of records pursuant to this section may charge the actual copying cost for each page copied.

(f) Upon request by the office, a long-term care facility shall provide to the office the name, address, and telephone number of the conservator, legal representative, or next-of-kin of any patient or resident.

9725. All records and files of the office relating to any complaint or investigation made pursuant to this chapter and the identities of complainants, witnesses, patients, or residents shall remain confidential, unless disclosure is authorized by the patient or resident or his or her conservator of the person or legal representative, required by court order, or release of the information is to a law enforcement agency, public protective service agency, licensing or certification agency in a manner consistent with federal laws and regulations.

9726. (a) The office shall establish a toll-free telephone hotline, in Sacramento, to receive telephone calls concerning any crises discovered by any person in a long-term care facility, as defined in subdivision (b) of Section 9701. The telephone hotline established under this section shall be operated to include at least all of the following:

(1) The telephone hotline shall be available 24 hours a day, seven days a week.

(2) The operator shall respond to a crisis call by contacting the appropriate office, agency, or individual in the local community in which the crisis occurred.

(3) The toll-free hotline telephone number shall be posted conspicuously in either the facility foyer, lobby, residents' activity room, or other conspicuous location easily accessible to residents in each licensed facility by the licensee. The office shall issue, in conjunction with the State Department of Social Services and the State Department of Health Services, guidelines concerning the posting of the toll-free number. The posting shall, at a minimum, include the purpose of the hotline number.

(b) The office shall respond to hotline telephone calls.

(c) The toll-free telephone hotline shall be staffed in a manner consistent with available resources in the department. The department may contract for the services of individuals to staff the telephone hotline. The department shall seek to provide opportunities for older individuals to be employed to staff the hotline. The State Department of Health Services and the State Department of Social Services, and other appropriate departments, shall make available to the department and the office training and technical assistance as needed.

9726.1. The office may do any or all of the following:

(a) Advise the public of any inspection report, statements of deficiency, and plans of correction, for any long-term health care facilities within its service area.

(b) Promote visitation programs to long-term health care facilities within its service area.

(c) Establish and assist in the development of resident, family, and friends' councils.

(d) Sponsor other community involvement in long-term health care facilities.

(e) Present community education and training programs, to long-term health care facilities, human service workers, families, and the general public, about long-term care and residents' rights issues.

(f) Those programs created under this section that are held in a facility shall be developed in consultation with the facility. If the facility and the ombudsman cannot agree on these programs, the State Ombudsman may assist in resolving the dispute.

Article 4. Enforcement

9730. Anyone who willfully interferes with any lawful action of the office shall be immediately referred to the appropriate licensing authority, which shall respond within the legally prescribed time period.

9731. Notwithstanding the availability of statutory damages, this chapter shall not be construed to limit the ability of a court to issue equitable relief where the legal remedies provided would not be an

adequate method of preventing or curing the particular injury in question.

9732. Any person who willfully interferes with any lawful action of the office shall be subject to a civil penalty of no more than one thousand dollars ($1,000), to be assessed by the director, who shall initiate the action, upon the request of the office, to collect the penalties in the jurisdiction in which the facility is located.

Article 5. Advisory Council

9740. The department shall establish an 11-member advisory council for the office. Members of the council shall be appointed by the director, and shall consist of representatives of community organizations, area agencies on aging, two long-term care providers, federal Older Americans Act funded direct services providers, the commission, the California Long-Term Care Ombudsman Association, county government, and other appropriate governmental agencies. The director shall make the appointments from lists of no less than five names submitted by each of the designated entities.

The advisory council shall provide advice and consultation to the State Long-Term Care Ombudsman Program on issues affecting the provision of ombudsman services and recommendations as appropriate. The advisory council shall meet at least three times annually. Representatives on the advisory council shall receive their actual and necessary travel and other expenses incurred in participation on the advisory council.

9741. At least 30 days prior to the designation of a new organization or agency as an approved organization, the department shall notify the advisory council for the purpose of soliciting comments regarding the designation.

CHAPTER 14. REGULATIONS

9750. The department may adopt regulations to implement this division 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 any emergency regulations following the date on which this revised division takes effect 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 division shall remain in effect for no more than 180 days.

SEC. 14. If Senate Bill 1482 is enacted during the 1996 portion of the 1995–96 Regular Session, either prior to, or subsequent to, the enactment of this act, and as enacted that act adds Section 9757.5 to the Welfare and Institutions Code, then Section 9757.5 of the Welfare

and Institutions Code, as contained in Senate Bill 1482, shall prevail to the extent of a conflict with any provision either repealed or added by this act.

SEC. 15. If Assembly Bill 2412 is enacted during the 1996 portion of the 1995–96 Regular Session, either prior to, or subsequent to, the enactment of this act, then any provision of Assembly Bill 2412 shall prevail to the extent of a conflict with any provision either repealed or added by this act.

SEC. 16. Sections 1 to 15, inclusive, of this act shall become operative only if Assembly Bill 2800 of the 1995–96 Regular Session of the Legislature is enacted and takes effect.

CHAPTER 1097

An act to repeal Sections 1568.10, 1568.11, 1568.12, 1568.13, 1568.14, 1568.18, 1568.20, 1568.21, 1568.23, 1568.24, and 1568.25 of, to repeal Article 6.5 (commencing with Section 1310) of Chapter 2 of Division 2 of, the Health and Safety Code, to repeal Section 9535.5 of, and to repeal and add Division 8.5 (commencing with Section 9000) of, the Welfare and Institutions Code, relating to aging.

[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. Article 6.5 (commencing with Section 1310) of Chapter 2 of Division 2 of the Health and Safety Code is repealed.

SEC. 1.5. Section 1568.10 of the Health and Safety Code is repealed.

SEC. 2. Section 1568.11 of the Health and Safety Code is repealed.

SEC. 3. Section 1568.12 of the Health and Safety Code is repealed.

SEC. 4. Section 1568.13 of the Health and Safety Code is repealed.

SEC. 5. Section 1568.14 of the Health and Safety Code is repealed.

SEC. 6. Section 1568.18 of the Health and Safety Code is repealed.

SEC. 7. Section 1568.20 of the Health and Safety Code is repealed.

SEC. 8. Section 1568.21 of the Health and Safety Code is repealed.

SEC. 9. Section 1568.23 of the Health and Safety Code is repealed.

SEC. 10. Section 1568.24 of the Health and Safety Code is repealed.

SEC. 11. Section 1568.25 of the Health and Safety Code is repealed.

SEC. 12. Division 8.5 (commencing with Section 9000) of the Welfare and Institutions Code is repealed.

SEC. 13. Division 8.5 (commencing with Section 9000) is added to the Welfare and Institutions Code, to read:

DIVISION 8.5. MELLO-GRANLUND OLDER CALIFORNIANS ACT

CHAPTER 1. GENERAL PROVISIONS

9000. This division shall be known, and may be cited, as the Mello-Granlund Older Californians Act, that reflects the policy mandates and directives of the Older Americans Act of 1965, as amended, and sets forth the state's commitment to its older population and other populations served by the programs administered by the California Department of Aging.

9001. The Legislature hereby finds and recognizes all of the following:

(a) Older individuals constitute a fundamental resource of the state that previously has been undervalued and poorly utilized, and ways must be found to enable older individuals to apply their competence, wisdom, and experience for the benefit of all Californians.

(b) There is a continuing increase in the number of older individuals in proportion to the total population.

(c) Today, 14 percent of California's population currently is 60 years of age and over.

(d) By the year 2010, the first influx of baby boomers will constitute 29.2 percent of California's total population over 60 years of age. By the year 2020, baby boomers will constitute 70.2 percent of California's total population over 60 years of age.

(e) By the year 2020, older individuals will represent 21 percent of California's total population.

(f) While the number of persons over 60 years of age is increasing rapidly, the number of older women, minorities and persons over the age of 75 are increasing at an even greater rate.

(g) Among persons over 75 years of age, there is a higher incidence of functional disabilities.

(h) The social and health problems of the older individual are further compounded by inaccessibility to existing services and by the unavailability of a complete range of services.

(i) Services to older individuals are administered by many different agencies and departments at both the state and local level.

(j) The planning and delivery of these services is not carried out with any degree of coordination among those agencies.

(k) Enhanced coordination reduces duplication, eliminates inefficiencies, and enhances service delivery for the consumer.

(*l*) The ability of the constantly increasing number of aged in the state to maintain self-sufficiency and personal well-being with the dignity to which their years of labor entitle them and to realize their maximum potential as creative and productive individuals are matters of profound importance and concern for all of the people of this state.

9002. The Legislature finds and declares all of the following:

(a) Programs shall be initiated, promoted, and developed through all of the following:

(1) Volunteers and volunteer groups.

(2) Partnership with local governmental agencies.

(3) Coordinated efforts of state agencies.

(4) Coordination and cooperation with federal programs.

(5) Partnership with private health and social service agencies.

(6) Participation by older individuals in the planning and operation of all programs and services that may affect them.

(b) It shall be the policy of this state to give attention to the unique concerns of our most frail and vulnerable older individuals.

(c) Recognizing the diversity in geography, economy, culture, and lifestyles in California and the diversity of local senior citizen networks, it shall be the policy of this state to encourage and emphasize local control to achieve the most effective blend of state and local authority.

(d) In recognition of the many governmental programs serving seniors, and as specified in paragraph (2) of subdivision (c) of Section 9102, the California Department of Aging should coordinate, as existing resources permit, with other state departments in doing all of the following:

(1) Promote clear and simplified access to information assistance and services arrangements.

(2) Ensure that older individuals retain the right of free choice in planning and managing their lives.

(3) Ensure that health and social services are available that do all of the following:

(A) Allow older individuals to live independently at home or with others.

(B) Provide for advocacy for expansion of existing programs that prevent or minimize illness or social isolation, and allow individuals to maximize their dignity and choice of living.

(C) Provide for protection of older individuals from physical and mental abuse, neglect, and fraudulent practices.

(4) Foster both preventive and primary health care, including mental and physical health care, to keep older individuals active and contributing members of society.

(5) Encourage public and private development of suitable housing.

(6) Develop and seek support for plans to ensure access to information, counseling, and screening.

(7) Encourage public and private development of suitable housing and recreational opportunities to meet the needs of older individuals.

(8) Encourage development of efficient community services including access to low-cost transportation services, that provide a

choice in supported living arrangements and social assistance in a coordinated manner and that are readily available when needed.

(9) Encourage and develop meaningful employment opportunities for older individuals.

(10) Encourage the development of barrier-free construction and the removal of architectural barriers, so that more facilities are accessible to older individuals.

(11) Promote development of programs to educate persons who work with older individuals in gerontology and geriatrics.

(12) Encourage and support intergenerational programming and participation by community organizations and institutions to promote better understanding among the generations.

(e) The California Department of Aging shall ensure that, to the extent possible, the services provided for in accordance with this division shall be coordinated and integrated with services provided to older individuals by other entities of the state. That integration may include, but not be limited to, the reconfiguration of state departments into a coordinated unit that can provide for multiple services to the same consumers. Services provided under this division shall be managed, directly or through contract, by local area agencies on aging or other local systems.

9003. (a) If any section of this code relating to aging cannot be given effect without causing this state's plan to be out of conformity with federal requirements, the section shall become inoperative to the extent that it is not in conformity with federal requirements.

(b) The planning, development, and implementation of changes in this division shall encourage and allow concurrent implementation and operation of a long-term care integration pilot project consistent with the intent of Article 4.05 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9. In implementing changes to this division, the department shall work with the State Department of Health Services to ensure local determination and local designation of the most appropriate long-term care services agency for each Long-Term Care Integration Pilot Project site.

9004. Unless the context otherwise indicates, the definitions of the terms set forth in this chapter apply for purposes of this division.

9004.5. "Adult day health care" means an organized day program of therapeutic, social, and health activities and services provided pursuant to this division to elderly persons with functional impairments, either physical or mental, for the purpose of restoring or maintaining optimum capacity for self-care. When provided on a short-term basis, adult day health care serves as a transition from a health facility or home health program to personal independence. When provided on a long-term basis, adult day health care services as an option to institutionalization in long-term care facilities, when 24-hour skilled nursing care is not medically necessary or viewed as desirable by the recipient or his or her family.

9005. "Advisory council" means a specific representative body of laypersons and service providers that represent the interests of older individuals within the boundaries of a planning and service area and that is officially recognized by the area agency on aging, the commission, and the department.

9006. "Area agency on aging" means a private nonprofit or public agency designated by the department that works for the interests of older Californians within a planning and service area, and engages in community planning, coordination, and program development and, through contractual arrangements, provides a broad array of social and nutritional services.

9007. "Care or case management services" means:

(a) Client assessment, in conjunction with the development of a service plan with the participant and appropriate others, to provide for needs identified by the assessment.

(b) Authorization and arrangement for the purchase of services, or referral, with follow-up, to volunteer, informal, or third-party payer services.

(c) Service and participant monitoring to determine that services obtained were appropriate to need, adequate to meet the need, of acceptable quality, and provided in a timely manner.

(d) Followup with clients, including periodic contact and initiation of an interim assessment, if deemed necessary prior to scheduled reassessment.

9008. "Commission" means the California Commission on Aging.

9010. "Comprehensive and coordinated system" means a program of interrelated social and nutrition services designed to meet the needs of older individuals in a planning and service area.

9011. "Department" means the California Department of Aging.

9012. "Director" means the Director of the California Department of Aging.

9013. "Frail elderly" means a person having those chronic physical or mental limitations that restrict individual ability to carry out normal activities of daily living and that threaten an individual's capacity to live an independent life.

9014. "Greatest economic need" means the need resulting from an income level at or below the poverty threshold established by the Bureau of the Census.

9015. "Greatest social need" means the need caused by noneconomic factors, that include physical and mental disabilities, language barriers, cultural or social isolation, including that caused by racial and ethnic status (for example, Black, Hispanic, American Indian, and Asian American), that restrict an individual's ability to perform normal daily tasks or that threaten his or her capacity to live independently.

9016. "Long-term care" means a coordinated continuum of preventive, diagnostic, therapeutic, rehabilitative, supportive, and maintenance services that address the health, social, and personal

needs of individuals who have restricted self-care capabilities. Services shall be designed to recognize the positive capabilities of the individual and maximize the potential for the optimum level of physical, social, and mental well-being in the least restrictive environment. Emphasis shall be placed on seeking services alternatives to institutionalization. Services may be provided by formal or informal support systems and may be continuous or intermittent. "Long-term care" may include licensed nursing facility, adult residential care, residential facility for the elderly, or home and community based services.

9017. "Older Americans Act" means Chapter 35 (commencing with Section 3001) of Title 42 of the United States Code.

9018. "Older individual" or "elderly" means a person 60 years of age or older, except where this provision is inconsistent with federal requirements.

9019. "Personal and community support networks" means families, friends, neighbors, church groups and community organizations to which the elderly turn naturally to for assistance.

9020. "Planning and service area" means an area specified by the department as directed by the Older Americans Act of 1965, as amended.

9021. "Preventive services" means services that avoid dependency and assist older persons in maintaining their good health, well-being, and growth.

9022. "Supportive services" means services that maintain individuals in home environments and avoid institutional care.

9023. "Systems of home and community based services" means an integrated continuum of service options available locally to older individuals and functionally impaired adults, through programs administered by the department who seek to maximize self-care and independent living in the home or homelike environment.

CHAPTER 2. CALIFORNIA DEPARTMENT OF AGING

9100. (a) There is in the Health and Welfare Agency the California Department of Aging.

(b) The department's mission shall be to provide leadership to the area agencies on aging in developing systems of home- and community-based services that maintain individuals in their own homes or least restrictive homelike environments.

(c) In fulfilling its mission, the department shall develop minimum standards for service delivery to ensure that its programs meet consumer needs, operate in a cost-effective manner, and preserve the independence and dignity of aging Californians. In accomplishing its mission, the department shall consider available data and population trends in developing programs and policies, collaborate with area agencies on aging, the commission, and other

state and local agencies, and consider the views of advocates, consumers and their families, and service providers.

(d) The minimum standards for its programs shall ensure that the system meets all of the following requirements:

(1) Have the flexibility to respond to the needs of individuals, their families and caregivers.

(2) Provide for consumer choice and self-determination.

(3) Enable consumers to be involved in designing and monitoring the system.

(4) Be equally accessible to diverse populations regardless of income, consistent with existing state and federal law.

(5) Have consistent statewide policy, with local control and implementation.

(6) Include preventive services and home and community based support.

(7) Have cost containment and fiscal incentives consistent with the delivery of appropriate services at the appropriate level.

9101. (a) The department shall consist of a director, and any staff as may be necessary for proper administration.

(b) The department shall maintain its main office in Sacramento.

(c) The Governor, with the consent of the Senate, shall appoint the director. The Governor shall consider, but not be limited to, recommendations from the commission.

(d) The director shall have the powers of a head of a department pursuant to Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code, and shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) The director shall do all of the following:

(1) Be responsible for the management of the department and achievement of its statewide goals.

(2) Assist the commission in carrying out its mandated duties and responsibilities in accordance with Section 9202.

(f) The Secretary of the Health and Welfare Agency shall ensure effective coordination among departments of the agency in carrying out the mandates of this division. For this purpose, the secretary shall regularly convene meetings concerning services to older individuals that shall include, but not be limited to, the State Department of Health Services, the State Department of Social Services, the State Department of Mental Health, and the department.

(g) The Secretary of the Health and Welfare Agency shall also encourage other state departments that have other programs for older individuals to actively participate in periodic joint meetings for the joint purpose of coordinating service activities. These departments shall include, but are not limited to, the Department of Housing and Community Development and the Department of Transportation in the Business, Transportation and Housing Agency,

the Department of Parks and Recreation in the Resources Agency, the California Arts Council, and the Department of Veterans Affairs.

9102. The duties and powers of the department shall be:

(a) To administer all programs under the Older Americans Act of 1965, as amended, and this division, including providing ongoing oversight, monitoring, and service quality evaluation to ensure that service providers are meeting standards of service performance established by the department. This shall include, but is not limited to, all of the following:

(1) Setting program standards and providing standard materials for training.

(2) Providing technical assistance to area agencies on aging, program managers, staff, and volunteers providing services.

(3) Development of the state plan on aging according to federal law.

(4) Maintain a clearinghouse of information related to the interests and needs of older individuals and provide referral services, if appropriate.

(5) Maintain a management information and reporting system; including a data base on service utilization patterns and demographic characteristics of the older population to be cross-classified by age, sex, race, and other information required for the planning process, and eliminate redundant and unnecessary reporting requirements.

(6) Encourage and support the involvement of volunteers in services to older individuals.

(7) Seek ways to utilize the private sector to assume greater responsibility in meeting the needs of older individuals.

(8) Encourage internships to be coordinated with schools of gerontology or related disciplines, including internships for older individuals.

(b) The department shall have primary responsibility for information received and dispersed to the area agencies on aging.

(c) The department shall be responsible for activities that promote the development, coordination, and utilization of resources to meet the long-term care needs of older individuals, consistent with its mission. The responsibilities shall include, but not be limited to, all of the following:

(1) Conduct research in the areas of alternative social and health care systems for older individuals.

(2) As specified in Section 9002, coordinate with agencies and departments that administer health, social, and related services for the purposes of policy development, development of care standards, consistency in application of policy, evaluation of alternative uses of available resources toward greater effectiveness in service delivery, including seeking additional federal and private dollars to support achievement of program goals, and ensure ongoing response to the identified special needs of the chronically impaired to provide support that maximizes their level of functioning.

(3) Monitor and evaluate programs and services administered by the department, utilizing standardized methodology.

(4) Develop and implement training and technical assistance programs designed to achieve program goals.

(5) Establish criteria for the designation, sanctioning and defunding of area agencies on aging.

9105. The department may adopt and promulgate regulations for the purpose of carrying out this division.

9106. (a) The department shall administer the administrative cost limitation, as defined in applicable federal law or regulation on a statewide basis. This allocation shall be based on notices of grant award. The formula to be used for the allocation of those funds shall be as follows:

(1) Each planning and service area shall receive a base allocation of fifty thousand dollars ($50,000).

(2) The remainder of the funds available up to the statewide limitation shall be distributed to area agencies on aging on the basis of the number of persons over the age of 60 years per planning and service area.

(b) It is the intent of the Legislature that in the event that an area agency on aging chooses to use other sources of funds for the administration of its area plan, the federal money made available to that area agency on aging for administration shall be used for the provision of direct services within its planning and service area.

9107. The department may accept gifts and grants from any source, public or private, to assist it in the performance of its functions, and these gifts and grants shall operate to augment any appropriation made for the support of the department.

9108. In addition to any nutrition programs conducted under the McCarthy-Kennick Nutrition Program for the Elderly Act of 1972 (Chapter 5.7 (commencing with Section 18325) of Part 6 of Division 9), the department, with the approval of the Department of Finance, may make funds available from Section 17 of Chapter 157 of the Statutes of 1976 and Chapter 3 (commencing with Section 9200) to other nutrition projects serving the needs of individuals aged 60 or over and their spouses provided by public or private nonprofit persons or agencies upon such terms and conditions as the department specifies.

9109. The department shall, in consultation with nutrition site directors and area agencies on aging, develop policies and guidelines for senior nutrition sites that ensure food safety and that maximize the use of leftover meals and food products. The guidelines shall include, but not be limited to, senior education programs on good nutrition and handling, storage of leftover foods, and reviewing current nutrition site reservation procedures.

9110. (a) The department may make available state funds to fund senior nutrition programs that complement programs

implemented pursuant to Title III of the federal Older Americans Act (42 U.S.C. Sec. 3021).

9111. (a) The Legislature finds and declares that there is a great disparity in the method by which the federal Older Americans Act (42 U.S.C. Sec. 3001, et seq.) and General Fund moneys are distributed to the 33 area agencies on aging in this state.

(b) It is the intent of the Legislature to correct these inequities in funding for nutrition and social service programs. It is further the intent of the Legislature that correction of these inequities be accomplished with minimal disruption to existing program services.

(c) The department, in consultation with the commission, the Area Agency on Aging Advisory Council of California, the California Association of Area Agencies on Aging, and representatives of provider groups, shall review the existing intrastate funding formula, established pursuant to Section 9112, for the allocation of state and federal funds provided for programs under Title III of the federal Older Americans Act (42 U.S.C. Sec. 3021 et seq.). The department shall update the formula in accordance with federal regulations and shall submit a report thereon to the chairperson of the fiscal committee of each house of the Legislature and the Chairperson of the Joint Legislative Budget Committee, no later than December 1, 1986. Changes to the intrastate funding formula may only be made by the Legislature.

(d) The department and commission shall hold hearings and present alternative criteria for public input relative to the funding formula provided for under subdivision (a).

(e) The department, based upon analysis and testimony provided for pursuant to subdivision (d), and information provided by the public, shall develop an implementation plan with cost factors to achieve parity amongst the area agencies on aging in California.

(f) The department shall ensure that priority consideration shall be given to criteria that reflect the state's intent to target services to those in greatest economic or social need, including, but not limited to, the low-income, non-English speaking, minority, and frail elderly.

(g) The department shall report to the Legislature on the activities provided for in this section no later than December 1, 1986.

9112. (a) The department shall implement an intrastate funding formula in accordance with all federal regulations. This formula shall apply to all federal and state funds allocated for programs provided for under Title III of the federal Older Americans Act (42 U.S.C. Sec. 3021, et seq.).

(b) The intrastate funding formula shall include all of the following:

(1) Assurances that all area agencies on aging shall have a fifty thousand dollar ($50,000) administrative base with the remainder of the allowable administrative dollars allocated to planning and service areas on the basis of number of persons over the age of 60 years.

(2) (A) When data is available, an annual update by the department for changes in population characteristics to include the number of persons per planning and service area over the age of 60 years and persons in greatest economic or social need as measured by all of the following variables which shall also be annually updated by the department:

(i) The number of persons over the age of 65 years receiving aid under the State Supplementary Program for the Aged, Blind, and Disabled, provided for under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9.

(ii) The number of persons over the age of 75 years.

(iii) The number of minority elderly over the age of 60 years.

(iv) The number of persons over the age of 60 years living alone.

(v) The number of non-English-speaking persons over the age of 60 years.

(B) The weight given to each variable shall simulate the weighting used in the Washington State intrastate funding formula adjusting for the geographic factor.

(3) A rural factor that guarantees a 105 percent allocation to rural planning and service areas.

(4) A hold-harmless factor that guarantees that no planning and service area shall have its federal and state allocation of funds under Title III of the federal Older Americans Act (42 U.S.C. Sec. 3021, et seq.), excluding area agency on aging administrative costs and funds carried over from the 1983–84 fiscal year, reduced below the 1984–85 fiscal year funding levels.

(c) In the event that additional federal or state funds, in excess of those appropriated under the 1984–85 Budget Act, or subsequent Budget Acts are made available for services, these funds shall be used to maintain existing service levels, with the remainder to be distributed to those planning and service areas which have been determined by the department to be under equity until parity is achieved.

(d) The department shall develop, in conjunction with the intrastate funding formula, a methodology for assuring compliance with the state targeting strategy on an intraplanning and service area basis. In developing this methodology the department shall provide assurances that as additional federal and state service dollars are allocated to the planning and service areas these dollars will be expended on those elderly individuals identified as in greatest economic or social need.

9114. The department may, where necessary to ensure the continued provision of services or program operation, advance available state funds to an area agency on aging in an amount up to one-sixth of the annual state and federal allocation to the area agency on aging.

CHAPTER 3. CALIFORNIA COMMISSION ON AGING

9200. (a) (1) There is in the state government the California Commission on Aging.

(2) The commission shall be composed of 25 persons, as follows:

(A) Nineteen persons shall be appointed by the Governor. Nine of the 19 persons shall be appointed by the Governor from lists of nominees submitted by the area agency on aging advisory councils. At least five names shall be submitted as nominees for each vacancy.

(B) Three persons appointed by the Speaker of the Assembly.

(C) Three persons appointed by the Senate Rules Committee.

(3) The commission shall be comprised of a majority of members 60 years of age or older.

(4) The commission shall be comprised of actual consumers of services under the federal Older Americans Act (42 U.S.C. Sec. 3001, et seq.), as amended.

(5) The commission shall be composed of representatives of the geographic, cultural, economic, and other social factors in the state.

(b) The commission composition requirements shall be complied with as vacancies occur.

9201. The term of office of members of the commission shall be three years. Members shall not serve more than two terms, and shall be appointed for staggered terms. The members shall select one of their members to serve as chairperson and one of their members to serve as vice chairperson on an annual basis.

A commissioner who fails to attend two consecutive monthly meetings or who fails to attend nine meetings per year, without having given written excuse acceptable to the commission, shall cause the commission to notify the appointing authority, and the appointing authority may declare the position vacant.

9202. The duties and functions of the commission shall be to do all of the following:

(a) Serve as the principal advocate body in the state on behalf of older individuals, including, but not limited to, advisory participation in the consideration of all legislation and regulations made by state and federal departments and agencies relating to programs and services that affect older individuals.

(b) Participate with the department in training workshops for community, regional and statewide senior advocates, to help older individuals understand legislative, regulatory, and program implementation processes.

(c) Prepare, publish, and disseminate information, findings, and recommendations regarding the well-being of older individuals.

(d) Actively participate and advise the department in the development and preparation of the State Plan on Aging, conduct public hearings on the State Plan on Aging, review and comment on the state plan, and monitor the progress of the plan's implementation.

(e) Meet at least six times annually in order to study problems of older individuals and present findings and make recommendations.

(f) Hold hearings throughout the state, that may include conducting an annual statewide hearing inviting all departments administering programs affecting seniors, in order to gather information and advise the Governor, Legislature, department, and agencies on all levels of government regarding solutions to problems confronting older individuals and the most effective use of existing resources and available services for individuals.

(g) Hire an executive director and, within budgetary limits, such staff as may be necessary for the commission to fulfill its duties.

(h) Develop, in cooperation with the department, a method for the selection of delegates to the statewide legislative meeting of senior advocates.

(i) Perform other duties as may be required by statute, regulation, or resolution.

(j) Meet and consult with the area agency on aging advisory councils in order to exchange information, and assist in training, planning, and development of advocacy skills.

9203. The commission may accept gifts and grants from any source, public or private, to assist it in the performance of its functions, and the gifts and grants shall operate to augment any appropriation made for the support of the commission, provided that the department shall serve as the fiscal agent for the accounting of the gifts and grants and that no gifts or grants shall be used for the operation by the commission of direct service programs that would conflict with the department's duties and functions as described by law.

9203.5. The commission may also accept gifts on behalf of the California Senior Legislature and the Area Agency on Aging Advisory Council of California, subject to Section 9203, as those provisions apply to the commission.

9204. Wherever there is a reference in any statute of this state to the Citizens Advisory Committee on Aging of the California Commission on Aging, it shall be construed to refer to the California Commission on Aging if the reference concerns an advisory or advocacy function, or a function described in Section 9202. Any other reference shall be construed to refer to the department.

9205. Members of the commission shall be reimbursed for their actual and necessary travel and other expenses incurred in the performance of their official duties.

9206. The commission shall render those services that are necessary to implement this chapter pursuant to an agreement entered into with the California Senior Legislature.

CHAPTER 4. CALIFORNIA SENIOR LEGISLATURE

9300. (a) The Legislature finds and declares that the needs of senior citizens for public programs in health, social services, recreation, transportation, education, housing, cultural services, and other appropriate areas of service can best be assessed by senior citizens.

(b) The Legislature also finds and declares that the California Senior Legislature, having been in continuous service since first provided for in 1980, and since its first session in 1981, and having proved its usefulness in providing model legislation for older citizens and advocating for the needs of seniors, shall be established through this chapter and shall operate according to the procedures set forth in this chapter.

9301. (a) The California Senior Legislature shall be composed of two houses, the California Senior Senate, composed of 40 members, and the California Senior Assembly, composed of 80 members.

(b) Members of the California Senior Legislature shall serve two-year terms.

9302. The members of the California Senior Legislature shall be elected, in all 33 planning and service areas in California, according to rules developed by the California Senior Legislature in cooperation with the California Association of Area Agencies on Aging and the commission.

9304. The California Senior Legislature shall have the full authority to define its program and utilize its funds in any way necessary to carry out the duties of this chapter, provided that no such program or activity is in violation of state law or regulation.

9305. (a) The funds for the California Senior Legislature and the supportive activities of the commission for the California Senior Legislature shall be allocated from the California Fund for Senior Citizens, private funds directed to the Legislature or the commission for the purpose of funding activities of the California Senior Legislature, or appropriate federal funds.

(b) It is the intent of the Legislature that the General Fund shall not be liable for any of the costs of the California Senior Legislature.

CHAPTER 5. AREA AGENCIES ON AGING AND ADVISORY COUNCILS

9400. (a) The Legislature hereby declares and recognizes the area agencies on aging to be the local units on aging in California that are supported from an array of sources, including federal funding largely through the federal Older Americans Act (42 U.S.C. Sec. 3001, et seq.), state and local government assistance, the private sector, and individual contributions for services.

(b) Area agencies on aging shall operate in compliance with the Older Americans Act and applicable regulations.

(c) Each area agency on aging shall maintain a professional staff that is supplemented by volunteers, governed by a board of directors or elected officials, and whose activities are reviewed by an advisory council consisting primarily of older individuals from the community.

(d) Each area agency on aging shall create a plan that considers available data and population trends, assesses the needs for services provided under this division reflective of the community needs, identifies sources for funding those services, and develops and implements a plan for delivery of those services based on those needs. Each plan shall include developing area home- and community-based systems of care that maintain individuals in their own homes or least restrictive environment, providing better access to these services through information and referral, outreach, and transportation, and advocating for the elderly on local, state, and national levels.

(e) Area agencies on aging shall function as the community link at the local level for development of home- and community-based services provided under the department's programs.

(f) The area agencies on aging shall implement subdivision (b) of Section 9100 at the local level, with particular emphasis on coordinating with the local systems to enable individuals to live out their lives with maximum independence and dignity in their own homes and communities through the development of comprehensive and coordinated systems of home- and community-based care. Nothing in this division shall preclude local determination and designation of service coordinators other than area agencies on aging, for development and implementation of the long-term care integration pilot projects set forth in Article 4.05 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9.

(g) In fulfilling their mission, area agencies on aging shall build upon the resources and the commitment unique to each community and shall be guided by a 10-point description of a community-based system that shall do all of the following:

(1) Have a visible focal point of contact where anyone can go or call for help, information, or referral on any aging issue.

(2) Provide a range of service options.

(3) Ensure that these options are readily accessible to all older individuals, whether independent, semi-independent, or totally dependent, no matter what their income.

(4) Include a commitment of public, private, and voluntary resources committed to supporting the system.

(5) Involve collaborative decisionmaking among public, private, voluntary, religious, and fraternal organizations, as well as older individuals and consumers in the community.

(6) Offer special help or targeted resources for the most vulnerable older individuals, those in danger of losing their independence.

(7) Provide effective referral from agency to agency to ensure that information or assistance is received, no matter how or where contact is made in the community.

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older individuals.

(9) Have a unique character that is tailored to the specific nature of the community.

(10) Be directed by leaders in the community who have the respect, capacity, and authority necessary to convene all interested persons to assess needs, design solutions, track overall success, stimulate change, and plan community responses for the present and for the future.

9401. Area agencies on aging and other county agencies that provide services to older adults through an established multidisciplinary team, including the county departments of public social services, health, mental health, alcohol and drug abuse, and the public guardian, may provide information regarding older adult clients only to other county agencies with staff designated as members of a multidisciplinary team that are, or may be, providing services to the same individuals for purposes of identifying and coordinating the treatment of individuals served by more than one agency. The county patients' rights advocate shall report any negative consequences of the implementation of this exception to confidentiality requirements to the local mental health director.

9402. The Legislature hereby declares and recognizes each area agency on aging advisory council as a principal advocate body on behalf of older individuals within a planning and service area. Area agency on aging advisory councils shall operate in conformance with applicable federal requirements. The local advisory councils shall meet regularly and provide advice and consultation on issues affecting the provision of services provided locally to older individuals.

9403. To the extent provided for in paragraph (2) of subdivision (a) of Section 18773 of the Revenue and Taxation Code, the Legislature hereby recognizes the Area Agency on Aging Advisory Council of California, comprised of the chairs of the local advisory councils.

CHAPTER 6. HOME-DELIVERED MEALS ACT

9500. This chapter shall be known and may be cited as the Home-Delivered Meals Act.

9501. (a) The department shall allocate any new funds to area agencies on aging based upon the existing intrastate funding formula, but without regard to subdivision (b) of Section 9112.

(b) Funds may be expended by area agencies on aging for any of the following purposes:

(1) To serve older individuals on waiting lists.

(2) To increase the number of days per week that meals are provided under the Home-Delivered Meals Program from five to seven.

(3) To provide modified diets specific to the needs of individuals being served by the Home-Delivered Meals Program.

(4) To establish an active outreach program to ensure that California's elderly are aware of the availability of home-delivered meals services.

(5) For capital outlay to expand the physical capacity of local needs programs to serve unmet need.

(6) To fund transportation costs related to the delivery of home-delivered meals.

(7) To otherwise deal with the unmet home-delivered nutrition needs identified by the area agency on aging in accordance with the criteria developed by the department pursuant to this subdivision.

(c) The department shall encourage area agencies on aging to include in the home-delivered meals programs alternative service models designed to reduce the social isolation of economically and nutritionally disadvantaged older individuals living in residential hotels.

CHAPTER 7. COMMUNITY-BASED SERVICES NETWORK

9530. (a) As part of its role in providing leadership to the area agencies on aging in the development of systems of home and community-based services to maintain individuals in their own homes or least restrictive homelike environments and to ensure the availability of information and awareness of their benefits, rights, and responsibilities, the department shall contract for an array of state-funded community-based services specified in this division to older individuals and functionally impaired adults.

(b) It is the intent of the Legislature to facilitate central points of access through integration of the financing and local management of the community-based services programs, specified in Chapter 7.5 (commencing with Section 9540) under the area agencies on aging. Except for any new funds appropriated, the department shall contract for these services in the planning and service areas where the services are currently provided.

(c) It is the intent of the Legislature to ensure that contracts for services specified in Chapter 7.5 (commencing with Section 9540) be awarded through a competitive procurement process, considering factors such as cost and scope of services. Where not otherwise prohibited by state or federal law or regulations, programs may benefit from the economical use of shared resources that are colocated. This chapter shall not prohibit the development or continuation of the colocation of these programs.

9530.5. Consistent with Article 4.05 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9, the Legislature reaffirms the need to restructure the array of categorical programs that offer medical, social, and other support services that are funded and administered by a variety of federal, state, and local agencies. It is in the interest of the state, as a whole, to address the duplication and fragmentation of the long-term care system and the home- and community-based services needs of the elderly and functionally impaired adults. Ideally, individuals needing long-term care should be able to access the health and social services system through a central point of entry, disclose basic demographic information, and be referred to the appropriate sources for assessment, care planning, and purchase of services. As a step towards this ideal, the department should develop, by January, 1998, a plan to expand its state-funded programs statewide, subject to the redirection of funds.

9531. (a) This chapter establishes the Community-Based Services Network.

(b) It is the intent of the Legislature that a Community-Based Services Network be initiated by the department in order to do all of the following:

(1) Locally integrate the state-funded community-based services programs, specified in this division, for older individuals and functionally impaired adults.

(2) Provide increased local flexibility in setting priorities for the services contained within the six state General Fund programs specified in Sections 9542 to 9547, inclusive.

(3) Contract responsibility for local management of the state-funded community-based services programs specified in Chapter 7.5 (commencing with Section 9540) to participating area agencies on aging.

(c) Each participating area agency on aging shall ensure the continuation of the funding match currently required for the community-based services programs specified in Chapter 7.5 (commencing with Section 9540). The match may consist of either cash or in-kind services.

(d) Each participating area agency on aging shall have responsibility for local program management of the community-based services programs specified in Chapter 7.5 (commencing with Section 9540).

9532. In addition to the definitions already contained in this division, the following definitions apply to this chapter.

(a) "Community-based services programs" means the programs specified in Chapter 7.5 (commencing with Section 9540).

(b) "Community-Based Services Network" means the contracting of state funds and local management responsibility for the community-based services programs specified in Chapter 7.5 (commencing with Section 9540) to area agencies on aging.

(c) "Functionally-impaired adult" means any adult 18 years of age or older, who is at risk of institutional placement due to chronic physical and mental limitations, including impairments caused by organic disorders or diseases, that restrict his or her ability to independently perform personal activities of daily living, who has an inadequate informal or formal support network, and who has to leave his or her home without supportive home- and community-based services.

(d) "Local program management" means the area agency on aging's responsibility to oversee the operation of programs specified in Chapter 7.5 (commencing with Section 9540).

(e) "Participating area agency on aging" means an area agency on aging that contracts with the department pursuant to this chapter.

9533. The department shall be responsible for, but not limited to, all of the following:

(a) Reviewing and approving the Community-Based Services Network component of the area plans of participating area agencies on aging.

(b) Entering into contracts with area agencies on aging to carry out the requirements set forth in this chapter and Chapter 7.5 (commencing with Section 9540) that shall include the requirements set forth in subdivisions (c) and (e) for area agencies local management responsibilities under this division.

(c) Developing the respective responsibilities for the department and participating area agencies on aging.

(d) Developing model language for area agencies on aging to use in their procurement and final contracts with direct service providers.

(e) Enforcing statewide requirements to ensure compliance with the statutes and regulations necessary to carry out the purposes of this chapter and Chapter 7.5 (commencing with Section 9540).

(f) Ensuring that a participating area agency on aging that has not been directly providing the services specified under the programs provided for in Chapter 7.5 (commencing with Section 9540) shall not commence directly providing these services until the department has reviewed and concurred with the area plan or update documentation demonstrating that the area agency can provide a comparable quality of these services at least as economically and at an enhanced benefit to the consumer or that there is not an adequate supply of these services in the affected area.

9534. (a) Contracts between the department and participating area agencies on aging shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(b) For the health insurance counseling and advocacy program, participating area agencies on aging that cover a single planning and service area shall maintain the existing service arrangements during the 1997–98 fiscal year, unless either a contractor terminates the

agreement according to the terms and conditions of the existing contract, the state and area agencies on aging terminate the agreement for legal cause under the terms and conditions of the existing contract, or if state funds cease to be budgeted for the specified services.

(c) For the health insurance counseling and advocacy program, participating area agencies on aging that cover multiple planning and service areas shall enter into mutual agreements or joint powers agreements, or both, to maintain the existing service arrangements for the health insurance counseling and advocacy program for the 1997–98 fiscal year and for one additional year, if needed, but not to extend beyond June 30, 1999, unless either a contractor terminates the agreement according to the terms and conditions of the existing contract, the state and area agency on aging terminate the agreement for legal cause under the terms and conditions of the existing contract, or if state funds cease to be budgeted for the specified services.

(d) For the programs other than the health insurance counseling and advocacy program specified in Chapter 7.5 (commencing with Section 9540), participating area agencies on aging shall maintain the existing service arrangements during the 1997–98 fiscal year, unless either a contractor terminates the agreement according to the terms and conditions of the existing contract, the state and area agency on aging terminate the agreement for legal cause under the terms and conditions of the existing contract, or if state funds cease to be budgeted for the specified services.

(e) For the programs other than the health insurance counseling and advocacy program specified in Chapter 7.5 (commencing with Section 9540), participating area agencies on aging shall maintain the existing service arrangements during the 1998–99 fiscal year, unless a contractor terminates the agreement according to the terms and conditions of the existing contract, the state and the area agency on aging terminate the agreement for legal cause under the terms and conditions of the existing contract, or state funds cease to be budgeted for the specified services.

(f) Subject to fiscal years specified in subdivisions (b) to (e), inclusive, participating area agencies on aging that elect not to provide the community-based services specified in Chapter 7.5 (commencing with Section 9540) directly, shall provide for the services through contracts awarded on the basis of a competitive proposal or bid process, or both, that is conducted at least once every four years, except that an area agency on aging shall not be required to conduct a full competitive process if all of the following conditions are met:

(1) A request for application is published, and full outreach is conducted to reasonably notify all potential interested parties, such as formal advertisements in trade journals and association publications.

(2) No applicants, in addition to current contractors, respond to the request for application.

(3) Complete documentation of the outreach effort is maintained by the area agency on aging.

(g) Any dispute regarding the procurement of, and the terms and conditions of the direct service contracts procured by the area agency on aging shall be resolved locally, consistent with subdivision (k) of Section 9535, and as specified in the local area agency procurement documents and contracts.

9535. Area agencies on aging shall be responsible for, but not limited to, all of the following:

(a) Contracting with the department to locally manage the community-based programs specified in and in accordance with the requirements of this chapter and Chapter 7.5 (commencing with Section 9540).

(b) Integrating the community-based services programs contracted under this chapter into the local area plan development process.

(c) Where the area agency on aging proposes to redirect funding under this chapter, the area agency shall ensure that it has submitted its recommendations to a locally formed advisory committee, that shall include consumers of long-term care services, representatives of local organizations of seniors, functionally impaired adults, representatives of employees who deliver direct long-term care services, and representatives of organizations that provide long-term care services. At least one-half of the members of the advisory committee shall be consumers of services provided under this chapter or their representatives.

(d) In addition, where the area agency on aging proposes to redirect funding under this chapter, an administrative action plan shall be developed and shall receive the approval of the area agency's governing board, which shall consider the input received pursuant to subdivision (c). The administrative action plan shall receive the governing board's approval prior to submission to the department for final state approval. The administrative action plan shall be an update to the area plan.

(e) Effective in the 1999–2000 fiscal year, and except for the health insurance counseling and advocacy program, determining which of the community-based services programs specified in Chapter 7.5 (commencing with Section 9540) and contracted under the authority in this chapter will continue to be funded and the amount of funding to be allocated for that purpose.

(f) Subject to Section 9534, providing directly, through contracts with other local governmental entities, or through competitively procured contracts, the community-based services programs.

(g) When required pursuant to Chapter 875 of the Statutes of 1995, and subject to the annual Budget Act, relinquishing funding originally contracted under this chapter and the associated local

management of the community-based services programs, and except for the health insurance counseling and advocacy program, to the long-term care integration pilot program.

(h) Monitoring direct services contract performance and ensuring compliance with the requirements of this chapter and any other relevant state or federal laws or regulations and the nondiscrimination requirements set forth under Article 9.5 (commencing with Section 4135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

(i) Appropriately expending and accounting for all funds associated with this chapter and providing access to all program books of account and other records to state auditors.

(j) Maintaining a systematic means of capturing and reporting to the department all required community-based services program data, specified in paragraph (5) of subdivision (a) of Section 9102.

(k) The governing body of each participating area agency shall establish a process within its area plan for requesting and providing a hearing for the programs specified under this chapter and Chapter 7.5 (commencing with Section 9540). A hearing shall be provided upon the request of either provider whose existing direct services contract is either terminated prior to its expiration date or reduced in scope outside of the state or federal budget process, or any applicant that is not selected in a direct service contract procurement process due to the alleged presence of a conflict of interest, procedural error or omission in solicitation request, or the lack of substantial evidence to support the award.

9535.5. (a) An area agency on aging that assumes new responsibilities under Chapter 7.5 (commencing with Section 9540) and this chapter shall develop a transition plan setting forth the steps to implement these chapters. This plan shall be completed by July 1, 1998, for all programs except the Health Insurance Counseling and Advocacy Program, for which the plan shall be completed by July 1, 1997.

(b) An area agency on aging to which subdivision (a) applies shall provide an opportunity to interested parties, including consumers of long-term care services, representatives of local organizations of seniors and functionally impaired adults, and representatives of organizations that provide long-term care services, to participate in the development of the transition plan, by submitting comments. A copy of the transition plan shall be made available for public inspection.

(c) At a minimum, the transition plan shall do all of the following:

(1) Specify the steps necessary to implement Chapter 7.5 (commencing with Section 9540) and this chapter locally in the area agency.

(2) Indicate the timeframe for completion of those steps.

(3) Specify the methods to be used throughout the transition period to solicit comments, including how the area agency on aging will use the area plan process to assess the need for services.

(4) Indicate the official responsible for the implementation of the plan.

(d) 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 chaptered prior to January 1, 1999, deletes or extends this date.

9536. (a) The state funds available for the community-based services programs may not be expended for services other than those specified in Chapter 7.5 (commencing with Section 9540), and shall be limited to the state funds appropriated to the department for the implementation of this chapter and Chapter 7.5 (commencing with Section 9540).

(b) Reimbursement for administrative costs incurred by a participating area agency on aging in operating the community-based services network shall not exceed the administrative funding ratio allowed for area agencies on aging under Title III of the federal Older Americans Act (42 U.S.C. Sec. 3001, et seq.), and as specified in the contract.

(c) The funding provided under this chapter may not be used to supplant the local matching requirements of other state and federal programs.

9537. The funding contracted by the department to the participating area agencies on aging under this chapter shall consist of both of the following:

(a) The proportion of local assistance funds appropriated to, and encumbered by, the department for direct services under the community-based services programs specified in Chapter 7.5 (commencing with Section 9540).

(b) The proportion of state operations cost savings realized by the department that are directly attributable to the local management of the community-based services programs specified in Chapter 7.5 (commencing with Section 9540) and any additional funds subsequently appropriated for the administrative costs incurred by the area agencies on aging.

(c) Subject to the annual Budget Act, in no event shall the amount appropriated to the participating area agency on aging for purposes of subdivisions (a) and (b), be less than that appropriated in the base fiscal year of 1997–98.

9538. (a) Persons involved in the procurement or management of services shall not engage in a conflict of interest, real or apparent.

(b) Staff and volunteers shall not engage in the business of insurance or other related activity while associated with the community-based services programs.

(c) For the services covered under the community-based services programs, no area agency or contract officer, employee, or board member shall use the formal names or acronyms for the services

except in conjunction with the provision of covered services, official duty, and participation in specifically sanctioned events.

(d) No information concerning any individual that is acquired by the department, the area agencies on aging, or service providers in the administration and delivery of community-based services specified in Chapter 7.5 (commencing with Section 9540), including the fact that an individual has sought or received services, shall be disclosed without the informed written consent of the individual to whom the information applies or unless pursuant to court order, after noticed hearing, irrespective of whether the person or party seeking disclosure already has the information, has other means of obtaining the information, had obtained a subpoena to obtain the information, or asserts any other basis or justification for disclosure of the information. Nothing in this subdivision shall preclude the exchange of information between the department, the area agencies on aging, and service providers which is necessary for the effective state and local administration and oversight of the programs involved, or the sharing of information with state licensing and certification agencies or law enforcement entities when the information is necessary for the performance of their respective duties.

CHAPTER 7.5. COMMUNITY-BASED SERVICES PROGRAMS

9540. It is the intent of the Legislature to ensure that older individuals and functionally impaired adults receive needed services that will enable them to maintain the maximum independence permitted by their functional ability and remain in their own home or communities for as long as possible. Except where otherwise provided, community-based services programs under the Community-Based Services Network shall meet all of the minimum requirements specified in this chapter.

9541. (a) The Legislature finds and declares that the purpose of the Health Insurance Counseling and Advocacy Program is to provide Medicare beneficiaries and those imminent of becoming eligible for Medicare with counseling and advocacy as to Medicare, private health insurance, and related health care coverage plans, on a statewide basis, and preserving service integrity.

(b) The department shall be responsible for, but not limited to, doing both of the following:

(1) To act as a clearinghouse for information and materials relating to Medicare, managed care, health and long-term care related life and disability insurance, and related health care coverage plans.

(2) To develop additional information and materials relating to Medicare, managed care, and health and long-term care related life and disability insurance, and related health care coverage plans, as necessary.

(c) Notwithstanding the terms and conditions of the contracts, direct services contractors shall be responsible for, but not limited to, all of the following:

(1) Community education to the public on Medicare, long-term care planning, private health and long-term care insurance, managed care, and related health care coverage plans.

(2) Counseling and informal advocacy with respect to Medicare, long-term care planning, private health and long-term care insurance, managed care, and related health care coverage plans.

(3) Referral services for legal representation or legal representation with respect to Medicare appeals, Medicare related managed care appeals, and life and disability insurance problems. Legal services provided under this program shall be subject to the understanding that the legal representation and legal advocacy shall not include the filing of lawsuits against private insurers or managed health care plans. In the event that legal services are contracted for by the agency separately from counseling and education services, a formal system of coordination and referral from counseling services to legal services shall be established and maintained.

(4) Educational services supporting long-term care educational activities aimed at the general public, employers, employee groups, senior organizations, and other groups expressing interest in long-term care planning issues.

(5) Educational services emphasizing the importance of long-term care planning, promotion of self-reliance and independence, and options for long-term care.

(6) To the extent possible, support additional emphasis on community educational activities that would provide for announcements on television and in other media describing the limited nature of Medicare, the need for long-term care planning, the function of long-term care insurance, and the availability of counseling and educational literature on those subjects.

(7) Recruitment, training, coordination, and registration, with the department, of health insurance counselors, including a large contingent of volunteer counselors designed to expand services as broadly as possible.

(8) A systematic means of capturing and reporting all required community-based services program data, as specified by the department.

(d) Participants who volunteer their time for the health insurance counseling and advocacy program may be reimbursed for expenses incurred, as specified by the department.

(e) The department, the Department of Corporations, and the Department of Insurance shall jointly develop interagency procedures for referring and investigating suspected instances of misrepresentation in advertising or sales of services provided by Medicare, managed health care plans, and life and disability insurers and agents.

(f) (1) No health insurance counselor shall provide counseling services under this chapter, unless he or she is registered with the department.

(2) No registered volunteer health insurance counselor shall be liable for his or her negligent act or omission in providing counseling services under this chapter. No immunity shall apply to health insurance counselors for any grossly negligent act or omission or intentional misconduct.

(3) No registered volunteer health insurance counselor shall be liable to any insurance agent, broker, employee thereof, or similarly situated person, for defamation, trade libel, slander, or similar actions based on statements made by the counselor when providing counseling, unless a statement was made with actual malice.

(4) Prior to providing any counseling services, health insurance counselors shall disclose, in writing, to recipients of counseling services pursuant to this chapter that the counselors are acting in good faith to provide information about health insurance policies and benefits on a volunteer basis, but that the information shall not be construed to be legal advice, and that the counselors are, generally, not liable unless their acts and omissions are grossly negligent or there is intentional misconduct on the part of the counselor.

(5) The department shall not register any applicant under this section unless he or she has completed satisfactorily training which is approved by the department, and which shall consist of not less than 24 hours of training that shall include, but is not limited to, all of the following subjects:

(A) Medicare.

(B) Life and disability insurance.

(C) Managed care.

(D) Retirement benefits and principles of long-term care planning.

(E) Counseling skills.

(F) Any other subject or subjects determined by the department to be necessary to the provision of counseling services under this chapter.

(6) The department shall not register any applicant under this section unless he or she has completed all training requirements and has served an internship of cocounseling of not less than 10 hours with an experienced counselor and is determined by the local program manager to be capable of discharging the responsibilities of a counselor. An applicant shall sign a conflict of interest and confidentiality agreement, as specified by the department.

(7) A counselor shall not continue to provide health insurance counseling services unless he or she has received continuing education and training, in a manner prescribed by the department, on Medicare, managed care, life and disability insurance, and other subjects during each calendar year.

9542. (a) The Legislature finds and declares that the purpose of the Alzheimer's Day Care-Resource Center Program is to provide access to specialized day care resource centers for individuals with Alzheimer's disease and other dementia-related disorders and support to their families and caregivers.

(b) The following definitions shall govern the construction of this section:

(1) "Participant" means an individual with Alzheimer's disease or a disease of a related type, particularly the participant in the moderate to severe stages, whose care needs and behavioral problems may make it difficult for the individual to participate in existing care programs.

(2) "Other dementia-related disorders" means those irreversible brain disorders that result in the symptoms described in paragraph (3). This shall include, but is not limited to, multi-infarct dementia and Parkinson's disease.

(3) "Care needs" or "behavioral problems" means the manifestations of symptoms that may include, but need not be limited to, memory loss, aphasia (communication disorder), becoming lost or disoriented, confusion and agitation, with the potential for combativeness, and incontinence.

(4) "Alzheimer's day care resource center" means a center developed pursuant to this section to provide a program of specialized day care for participants with dementia.

(c) The department shall adopt policies and guidelines to carry out the purposes of this section, and the adoption thereof 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.

(d) In order to be eligible to receive funds under this section, a direct services contract applicant shall do all of the following:

(1) Provide a program and services to meet the special care needs of, and address the behavioral problems of, participants.

(2) Provide adequate and appropriate staffing to meet the nursing, psychosocial, and recreational needs of participants.

(3) Provide physical facilities that include the safeguards necessary to protect the participants' safety.

(4) Provide a program for assisting individuals who cannot afford the entire cost of the program. This may include, but need not be limited to, utilizing additional funding sources to provide supplemental aid and allowing family members to participate as volunteers at the applicant's facility.

(5) Utilize volunteers and volunteer aides and provide adequate training for those volunteers.

(6) Provide a match of not less than 25 percent of the direct services contract amount consisting of cash or in-kind contributions, identify other potential sources of funding for the applicant's facility, and outline plans to seek additional funding to remain solvent.

(7) Maintain family and caregiver support groups.

(8) Encourage family members and caregivers to provide transportation to and from the applicant's facility for participants.

(9) Concentrate on participants in the moderate to severe ranges of disability.

(10) Provide or arrange for a noon meal to participants.

(11) Establish contact with local educational programs, such as nursing and gerontology programs, to provide onsite training to students.

(12) Provide services to assist family members, including counseling and referral to other resources.

(13) Serve as model centers available to other service providers for onsite training in the care of these patients.

(14) Involve the center in community outreach activities and provide educational and informational materials to the community.

(15) Maintain a systematic means of capturing and reporting all required community-based services program data.

(e) Notwithstanding any provision of the Health and Safety Code, direct services contractors that are not already licensed shall be exempt from licensure requirements under this division and shall be subject exclusively to this chapter.

(f) Nothing in this chapter shall be construed to prevent existing adult day care services, including adult day health care centers, from developing a specialized program under this chapter. The applicants shall meet all of the requirements for direct services contractors in this chapter and satisfactorily demonstrate that the direct services contract funding award shall be used to develop a distinct specialized program for this target population.

9543. (a) The Legislature finds and declares that the purpose of the Brown Bag Program shall be to provide opportunities for sponsors and volunteers to glean through excess food stuffs that are donated, and distribute bags of food to help meet the nutritional needs of low-income older individuals.

(b) For purposes of this section "low-income older individual" means a person 60 years of age or older, with an income no higher than that of the annual basic benefit level provided under the State Supplementary Program for a blind applicant or recipient pursuant to subdivision (a) of Section 12200.

(c) In order to be eligible to receive funds under this chapter, a direct services contract applicant shall meet, but need not be limited to, all of the following conditions:

(1) Provide a cash match of 25 percent and an in-kind match of 25 percent prior to receiving funds under Chapter 7 (commencing with Section 9530) and this chapter.

(2) Use matching sources that are derived from, but are not limited to, city, county, and federal funds, contributions, and private or business donations. Priority shall be given to those local programs with a larger local match. State money shall be used as a catalyst for

charitable contributions, including in-kind and local community support.

(3) Operate under a board of directors, with at least one low-income older individual as a representative, and other interested persons from the community.

(4) Provide adequate space to store food with necessary access to refrigerator and freezer storage.

(5) Utilize volunteers to distribute produce and unsold foodstuffs to low-income older individuals.

(6) Maintain a systematic means of capturing and reporting all required community-based services program data.

(d) Food distributed to seniors shall comply with county health regulations. Except for any injury resulting from gross negligence or willful act, no county or county agency established pursuant to this chapter and no person who donates any agricultural product shall be liable for any injury, including, but not limited to, injury resulting from the ingesting of the product, as a result of any act, or the omission of any act, in connection with donating any product pursuant to this chapter.

9544. (a) The Legislature finds and declares that the purpose of the Foster Grandparent Program shall be to provide personally meaningful volunteer community service opportunities to low-income older individuals through mentoring children with exceptional physical, developmental, or behavioral needs in accordance with the federal National and Community Service Trust Act of 1993 (42 U.S.C. Sec. 12651 et seq.).

(b) For purposes of this section, "foster grandparent volunteer" means an individual who is 60 years of age or older has an insufficient income, as determined in accordance with Part 1208 of Title 45 of the Code of Federal Regulations, and provides at least four hours a day, five days a week of foster grandparent services under this chapter.

(c) Direct service contractors shall meet all of the following requirements:

(1) Be a city, county, city and county, or department of the state, or any suitable private, nonprofit organization, that demonstrates the ability to provide the specified services in a variety of settings, including, but not limited to, hospital pediatric wards, facilities for the physically, emotionally, or mentally impaired, correctional facilities, schools, day care centers, and residences.

(2) Recruit, select, train, and assign staff and volunteers.

(3) Provide volunteer participants with the same benefits, transportation, stipends, and income exemptions as provided to the foster grandparent volunteers funded through the Corporation for National Service.

(4) Provide or arrange for meals, transportation, and supervision for volunteers.

(5) Provide benefits and meaningful volunteer service opportunities to low-income individuals 60 years of age and older.

(6) Serve children under 21 years of age, who have special needs, or are deprived of normal relationships with adults.

(7) Provide services to, but not limited to, any of the following:

(A) Premature and failure-to-thrive babies, abused, neglected, battered, and chronically ill children in hospital.

(B) Autistic children, children with cerebral palsy and developmentally disabled children placed in institutions for the developmentally disabled.

(C) Physically impaired children, mentally disabled children, emotionally disturbed children, developmentally disabled children, and children who are socially and culturally deprived in school settings and child care centers, dependent children, neglected children, mentally disabled children, emotionally disturbed or physically impaired children, battered and abused children in residential settings.

(D) Delinquent children and adolescents in correctional institutions.

(E) Children under 19 years of age, when the child has been charged with committing, or adjudged to have committed, an offense which is the equivalent to, a misdemeanor.

(8) Maintaining a systematic means of capturing and reporting all required community-based services program data.

(c) In addition to the opportunity to help children who have exceptional physical, developmental or behavioral needs and are deprived of normal relationships with adults, foster grandparent volunteers shall receive all of the following:

(1) Expenses for transportation to and from their homes and the place where they render their services or may have transportation in buses or in other transportation made available to them.

(2) One free meal during each day in which the foster grandparent renders services.

(3) Accident insurance, an annual physical examination, and a nontaxable hourly stipend.

9545. (a) The Legislature finds and declares that the purpose of the Linkages Program shall be to provide comprehensive and timely information, one-time only assistance in securing community services when deemed necessary or desirable, and short-term specialized assistance and case management services to assist the frail elderly and functionally impaired adults to remain as independent as possible for as long as possible in their communities.

(b) Notwithstanding the terms and conditions of the existing contracts, direct services contracts shall be responsible for providing, but not limited to, the following:

(1) Comprehensive and timely information, when necessary, to individuals and their families about the availability of community resources to assist functionally impaired adults and the frail elderly to maintain the maximum independence permitted by their functional ability.

(2) One-time only assistance in securing community services when deemed necessary or desirable in order to assure timely receipt of the needed services to help maintain maximum independence of a frail older person or functionally impaired adult.

(3) Short-term specialized assistance, including counseling and the arrangement of an action plan, when there is a temporary probable threat to the ability of the frail elderly person or functionally impaired adult to remain in the most independent living arrangement permitted by his or her functional ability.

(4) Ongoing care or case management to frail elderly and functionally impaired adults to help prevent or delay placement in nursing facilities. For purposes of this paragraph, "care or case management" means all of the following:

(A) Client assessment, in conjunction with the development of a service plan with the participant and other appropriate persons, to provide for needs identified by the assessment.

(B) Authorization and arrangement for the purchase of services, or referral, with follow-up, to volunteer, informal, or third-party payer services.

(C) Service and participant monitoring to determine that the services obtained are appropriate to need, of acceptable quality, and provided in a timely manner.

(D) Follow-up with clients, including periodic contact and initiation of an interim assessment, if deemed necessary, prior to scheduled reassessment.

(5) Assistance to older individuals entering or returning home from nursing facilities and who need help to make the transition.

(6) Experience in community long-term care services and capability to serve the frail elderly and functionally impaired adults, and where applicable, ensure separateness of the programs and demonstrate protective measures to avoid conflict of interest.

(7) A systematic means of capturing and reporting all required community-based services program data.

(c) Contractors shall maximize to the fullest extent possible the use of existing services resources before using program funds to purchase services for clients. Any benefits received as a result of these purchases either shall not be considered income for purposes of programs provided for under Division 9 (commencing with Section 10000) or shall not be considered an alternative resource pursuant to Section 12301.

(d) (1) Each county shall deposit funds collected pursuant to Section 1465.5 of the Penal Code in its general fund, to be available for use only for the support of services provided under this chapter in that county, including county administrative costs not exceeding 10 percent of the funds collected, except as otherwise provided in this subdivision. A county may join with other counties to establish and fund a program of services under this chapter.

(2) Funds utilized pursuant to this section shall not supplant, be offset against, or in any way reduce funds otherwise appropriated for the support of services provided under this chapter.

9546. (a) The purpose of the Respite Program shall be to provide temporary or periodic services for frail elderly or functionally impaired adults to relieve persons who are providing care, or recruitment and screening of providers and matching respite providers to clients.

(b) Direct services contractors shall do either one or more of the following:

(1) In acting as a respite care information and referral agency, recruiting and screening respite providers and matching respite providers to clients. Respite care registries shall consist of the names, addresses, and telephone numbers of providers, including, but not limited to, individual caregivers, volunteers, adult day care services, including adult day health care services and services provided by licensed residential care facilities for the elderly.

(2) Arranging for and purchasing respite services for program participants.

(3) Maintaining a systematic means of capturing and reporting all required community-based services program data.

9547. (a) The purpose of the Senior Companion Program shall be to provide personally meaningful volunteer community service opportunities to low-income older individuals for the benefit of adults who need assistance in their daily living. It is the purpose of this chapter to enable older individuals to provide care and support on a person-to-person basis to adults with special needs such as the frail elderly, physically impaired adults and those adults who are mentally or neurologically impaired, in accordance with the National and Community Service Trust Act of 1993 (42 U.S.C. Sec. 12651, et seq.).

(b) For the purposes of this chapter "senior companion volunteer" means an older individual who is 60 years of age or older, has an insufficient income, as determined in accordance with Part 1208 of Title 45 of the Code of Federal Regulations, and provides at least four hours a day, five days a week, of senior companion services under this chapter.

(c) Requirements of direct service contractors:

(1) Be a city, county, city and county, or department of the state, or any suitable private, nonprofit organization, that demonstrates the ability to provide the specified services in a variety of settings, including, but not limited to, in residential, nonresidential, institutional and in-home settings.

(2) Demonstrate the ability to recruit, select, train, and assign staff and volunteers.

(3) Provide volunteer participants with the same benefits, transportation, stipends, and income exemptions as provided to the senior companion volunteers funded through the Corporation for National Service.

(4) Provide or arrange for meals, transportation, and supervision for volunteers.

(5) Provide benefits and meaningful volunteer service opportunities to low-income individuals 60 years of age or older.

(6) Serve adults who are frail and have functional impairments.

(7) Provide services to, but not limited to, all of the following:

(A) Older individuals who were either formerly active and are now bedfast, too frail, or too ill to be transported to special programs.

(B) Physically impaired older individuals who cannot leave their homes due to the extent of their disabilities.

(C) Individuals who, due to functional impairments, fear of a fast-moving society, and the possibility of bodily harm, are afraid to go out.

(D) Physically impaired individuals who are capable of interacting in activities for the physically impaired, but because of their limitations have been overprotected by their guardians.

(E) Physically or mentally impaired older individuals who have become so depressed that they have withdrawn from all social interaction and are confined as a result of psychological problems.

(F) Physically impaired individuals who are anxious to be enrolled in day care programs, but have to stay on waiting lists until there is an opening.

(8) Maintain a systematic means of capturing and reporting all required community-based services program data.

(d) In addition to the opportunity to help other adults who have special needs, such as the frail elderly, physically impaired adults and those adults who are mentally or neurologically impaired, senior companion volunteers shall receive all of the following:

(1) Expenses for transportation to and from their homes and the place where they render their services or transportation in buses or in other transportation made available to them.

(2) One free meal during each day in which the senior companion renders services.

(3) Accident insurance, an annual physical examination, and a nontaxable hourly stipend.

(e) Senior companions funded under this chapter shall not be assigned to individuals already receiving in-home supportive services.

CHAPTER 8. MULTIPURPOSE SENIOR SERVICES PROGRAM

9560. (a) The purpose of this chapter shall be to establish a program to serve frail elderly individuals 65 years of age and older who are certifiable for placement in a nursing facility. This program shall be known as the Multipurpose Senior Services Program, and shall be structured and carried out in a manner consistent with Section 1396n(c) of Title 42 of the United States Code.

(b) This chapter clarifies the intent of the Legislature that the Multipurpose Senior Services Program shall continue:

(1) To prevent premature disengagement of older individuals from their indigenous communities and subsequent commitment to institutions.

(2) To provide optimum accessibility of various important community social and health resources available to assist active older individuals to maintain independent living.

(3) To provide that the frail older individual who has the capacity to remain in an independent living situation has access to the appropriate social and health services without which independent living would not be possible.

(4) To provide the most efficient and effective use of public funds in the delivery of these social and health services.

(5) To coordinate, integrate, and link these social and health services, including county social services, by removing obstacles which impede or limit improvements in delivery of these services.

(6) To allow the state substantial flexibility in organizing or administering the delivery of social and health services to its older individuals.

9561. Program services provided pursuant to this chapter may be purchased by program funds or received from other community sources that consist of, but are not limited to, case management services, recreation services, educational services, senior center programs, information and referral services, transportation, income maintenance counseling, housing services, outreach services, volunteer programs, legal services, home repair services, escort services, telephone reassurance services, friendly visiting services, health assessment services, psychological assessment services, nutrition services, home health services, preventive health services, mental health services, homemaker chore services, meals services, adult day care services, including adult day health care, and nonmedical respite care services.

9562. (a) This chapter shall be administered by the department, under the authority of an approved interagency agreement with the State Department of Health Services, the single state medicaid agency.

(b) To the extent permitted by federal law, each department within the Health and Welfare Agency including departments designated as single state agencies for the programs described in Section 9561, shall waive regulations and general policies and make resources available which are necessary for the administration of this chapter, upon request of the agency.

9563. The department shall formulate criteria for approval and designation of local Multipurpose Senior Services Program sites. The criteria shall include, but need not be limited to, all of the following:

(a) Specifications for a social and health review team to evaluate older individuals and to ensure that continuity of social, economic,

and health services is provided to maintain older individuals at the appropriate level of care.

(b) Development of social and health services necessary to maintain the older individual at the appropriate level of care.

(c) Specifications for the quality of the social and health services to be provided.

(d) Coordination and integration of the social and health services described in Section 9561.

(e) The number of local sites, which shall be consistent with the moneys made available for purposes of this chapter.

(f) Coordination with local governmental agencies concerned with multipurpose senior services.

(g) Specifications for the evaluation of the proposals submitted for the new local sites and for the evaluation of the local sites.

9564. Nothing in this chapter shall preclude expansion of Multipurpose Senior Services Program services if cost effectiveness is demonstrated. The expansion shall be through increasing numbers of clients served in individual sites or through expansion of the number of sites to include additional geographic regions of the state.

9565. The department shall do all of the following:

(a) Enter into agreements and negotiated contracts with any nonprofit organization or governmental entity to operate the local sites, consistent with the criteria adopted pursuant to Section 9563. In letting these contracts, the department shall not anticipate future appropriations.

(b) Make grants to local sites from available funds.

(c) Monitor local sites.

(d) Cause the service sites to be evaluated in accordance with the established criteria.

(e) Seek and utilize any available federal, state, or private funds that may be available for carrying out the purposes of this chapter.

(f) Notwithstanding any other provision of law, local sites established pursuant to this chapter may contract with the Director of Health Services as Medi-Cal programs pursuant to Chapter 8 (commencing with Section 14200) of Part 3 of Division 9. Contracts with the local sites shall be deemed to be for the purposes specified in Section 14494, and may utilize funds appropriated from the Health Care Deposit Fund pursuant to Section 14157.

(g) Assist in coordinating local site programs with local governmental programs and services for older individuals.

9566. The department may, where necessary to ensure the effective operation of a multipurpose senior services program, advance to the program's local government and private nonprofit administering agency, an amount not to exceed 25 percent of the estimated annual allocation to the program, under this chapter, as determined by the department pursuant to the estimated annual budget submitted by the program. Subsequent payments to the local government and private nonprofit administering agency for the

Multipurpose Senior Services Program shall be prorated to reflect any advance payment made under this section.

9567. This chapter shall remain in effect so long as a waiver pursuant to Section 1396n(c) of Title 42 of the United States Code has been granted by the federal Department of Health and Human Services to the State Department of Health Services.

9568. The department shall explore options for, and obtain necessary legislative and governmental agency approvals to expand, the Multipurpose Senior Services Program. The department shall attempt to obtain the necessary federal approval to expand access to case management services into every planning and service area in the state and to improve the delivery of case management services.

CHAPTER 9. SENIOR CENTER BOND ACT OF 1984

9590. This chapter shall be known and may be cited as the Senior Center Bond Act of 1984.

9591. The following definitions shall govern the construction of this chapter:

(a) "Acquiring" means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a senior center.

(b) "Altering" or "renovating" means making modifications to an existing facility that are necessary for cost-effective use as a senior center, including restoration, repair, expansion, and all related physical improvements.

(c) "Area agency" means the area agency on aging designated in a planning and service area to develop and administer the area plan for a comprehensive and coordinated system of services for older individuals.

(d) "Board" means the California Department of Aging.

(e) "Bond" means a state general obligation bond issued pursuant to this chapter adopting the provisions of the State General Obligation Bond Law.

(f) "Committee" means the Senior Center Finance Committee.

(g) "Constructing" means building a new facility, including the costs of land acquisition and architectural and engineering fees.

(h) "Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of three hundred dollars ($300) or more.

(i) "Fund" means the Senior Center Bond Act Fund of 1984.

(j) "Multipurpose senior center" means a community facility with regular operating hours and staff that provides for a broad spectrum of health, social, nutritional, and educational services and recreational activities for older individuals.

(k) "Nonprofit" means an institution or organization that is owned and operated by one or more corporations or associations, with no part of the net earnings benefiting any private shareholder or individual.

(*l*) "Planning and service area" means a geographic area that is designated for purposes of planning, development, delivery, and overall administration of services under an area plan.

(m) "Program" means one of the service components provided for older individuals in a senior center.

(n) "Senior center" means a community focal point on aging, where older individuals as individuals or in groups come together for services and activities which enhance their dignity, support their independence, and encourage their involvement in and with the community. Senior center programs consist of a variety of services and activities in areas, such as education, creative arts, recreation, advocacy, leadership development, employment, health, nutrition, social work, and other supportive services.

(o) "Startup costs" means a one-time capital outlay to fund programs in a newly constructed senior center, a one-time capital outlay to fund additional programs in an existing senior center, or initial service delivery costs.

9592. There is hereby created in the State Treasury the Senior Center Bond Act Fund, which is comprised of moneys collected pursuant to the issuance and sale of bonds pursuant to this chapter. The Senior Center Bond Act Fund is hereby appropriated to the Controller, without regard to fiscal years, for allocation, upon the request of the director, for the purposes specified in this chapter.

9593. The department shall make awards from funds derived from this bond act to public or private nonprofit agencies for the purpose of acquiring, renovating, constructing, and purchasing of equipment for senior centers, or funding startup costs of programs, or program expansion of senior center programs.

9594. Eligible applicants for funding under this chapter include units of general purpose local government or other nonprofit private agencies or organizations, including the State of California or area agencies on aging.

9595. (a) A recipient of a contract for the acquisition of a facility to be used as a senior center shall assure that the facility will be used for that purpose for at least 10 years from the date of acquisition.

(b) A recipient of a contract for the renovation of an existing facility to be used as a senior center shall assure the department that the facility will be used for that purpose for the following periods:

(1) Not less than three years from the date the contract terminates, where the amount of the award does not exceed thirty thousand dollars ($30,000).

(2) If the award exceeds thirty thousand dollars ($30,000), the fixed period of time shall increase one year for each additional ten thousand dollars ($10,000) or part thereof, to a maximum of seventy-five thousand dollars ($75,000).

(3) For awards which exceed seventy-five thousand dollars ($75,000), the fixed period of time shall not be less than 10 years.

(c) A recipient of a contract for the construction of a facility to be used as a senior center shall assure the department the facility will be used for that purpose for at least 20 years after completion of construction.

9596. (a) The State of California shall be entitled to recapture a portion of state funds from the owner of a facility, if within 10 years after acquisition or 20 years after completion of construction, either of the following occurs:

(1) The owner of the facility ceases to be a public or nonprofit agency.

(2) The facility is no longer used for senior center activities.

(b) The amount recovered shall be that proportion of the current value of the facility equal to the proportion of state funds contributed to the original cost. The current value of the facility shall be determined by an agreement between the owner of the facility and the State of California, or by an action in the court in the jurisdiction in which the facility is located.

9597. A facility altered, acquired, renovated, constructed, or equipped using funds allocated under this chapter to be used for a senior center facility may not be used and may not be intended to be used for sectarian instruction or as a place for religious worship.

9598. In a senior center facility that is shared with other age groups, funds received under this chapter may support only the following:

(a) That part of the facility used by older individuals.

(b) A proportionate share of the costs based on the extent of use of the facility by older individuals.

9599. Proposals shall do all of the following:

(a) Document the need for a senior center or renovation, program addition, or expansion or equipment purchase.

(b) Contain a written commitment from service providers that services will be provided in the senior center.

(c) Contain a community match for funding equal to 15 percent of the total amount requested. The match may be in cash or in kind. Each area agency shall waive the community match upon verifying that the low-income or rural community made a substantial effort to secure a match, but still was unable to secure the required match.

(d) Document the cost effectiveness of the proposal.

9600. (a) Priority for funding shall be given to proposals for multipurpose senior centers that are open to all seniors. Each area agency shall rank the proposals it submits to the department for funding. The area agency, together with its advisory council, in ranking the proposals shall consider the most feasible facilities to serve as senior centers and the most qualified local agencies to operate the programs in those centers in their jurisdictions. Approval from the area agency shall be obtained before any contract is awarded in its jurisdiction.

(b) The department and each area agency shall also give priority consideration to fund proposals that are from rural or low-income and racial or ethnic minority areas of the state.

(c) The department shall consider any protest or objection regarding the award of a contract, whether submitted before or after the award, provided that the protest is filed within the time period established in the request for proposals. All protests or objections shall be filed in writing. The protesting party shall be notified in writing of the final decision on the protest, and the notification shall set forth the rationale upon which the decision is based.

9601. Funds not utilized by each planning and service area shall be reallocated to other planning and service areas with the highest documented need for a senior center.

9602. The State General Obligation Bond Law is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued pursuant to this chapter, and the provisions of that law are included in this chapter as though set out in full in this chapter.

9603. For the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized in this chapter, the Senior Center Finance Committee is hereby created. The committee consists of the Treasurer, the Controller, the Director of Finance, and the director. The committee is hereby authorized and empowered to create a debt or debts, or liability or liabilities, of the State of California, in the aggregate amount of fifty million dollars ($50,000,000), in the manner provided in this chapter. The debt or debts, or liability or liabilities shall be created for the purpose of acquiring, renovation, constructing, purchasing of equipment, funding startup costs of programs, or funding expansion of existing programs of senior centers. When sold, the bonds authorized by this chapter shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereon. There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state, as shall be required to pay the interest and principal on the bonds maturing each year, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that shall be necessary to collect that additional sum. All money deposited in the fund that has been derived from premium and accrued interest on bonds sold shall be available for transfer to the General Fund as a credit to expenditures for bond interest. All money deposited in the fund pursuant to any provision of law requiring repayments to the state for assistance financed by the proceeds of the bonds authorized by this chapter shall be available for transfer to the General Fund. When transferred to the General Fund, this money shall be applied

as a reimbursement to the General Fund on account of principal and interest on the bonds paid from the General Fund.

9604. There is hereby appropriated from the General Fund in the State Treasury for the purpose of this chapter, an amount as will be equal to the following:

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

(b) That sum as is necessary to carry out Section 9603, which sum is appropriated without regard to fiscal years.

9605. (a) For purposes of carrying out this chapter, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the board in accordance with this chapter. These withdrawals from the General Fund shall be returned to the General Fund with interest at the rate which would have otherwise been earned by these sums in the Pooled Money Investment Fund.

(b) The committee may authorize the Treasurer to sell all or any part of the bonds authorized by this chapter at the time or times as may be fixed by the Treasurer.

(c) All proceeds from the sale of bonds, except those derived from premiums and accrued interest, shall be available for the purpose provided in Section 9592 but shall not be available for transfer to the General Fund to pay principal and interest on bonds. The money in the fund may be expended only as provided in this chapter.

CHAPTER 10. AGING INFORMATION AND EDUCATION

9630. As part of its role in providing leadership in advocating on behalf of older individuals, the department shall make efforts to increase public awareness about areas of importance to California's older individuals, their families, and other caregivers. These efforts to increase public awareness and education may be accomplished through the use of public service announcements, radio and television commercials or infomercials, access on the internet, newspaper and other periodical editorials and letters to the editor, public and corporate symposiums, and mass transit and outdoor signage.

9631. (a) The department shall establish an Aging Information and Education Fund, from funds made available pursuant to the annual Budget Act, to implement public awareness of various issues, including at least the following areas:

(1) Medication management — to call attention to the large percentage of older individuals admitted to hospitals solely due to the mismanagement of prescribed and over-the-counter drugs, the need

for proper and timely use of medications, and the role of the attending physicians in prescribing medications and their interactive potential for harm.

(2) Elder abuse prevention — to work in conjunction with state and local law enforcement entities to bring focus to the need to protect older individuals from physical, emotional, and fiduciary abuse, so that they may continue to live with peace of mind about their safety.

(3) Toll-free line for linkage to local service networks — to develop and make the public aware of a single statewide toll-free telephone number for access to local information about services available to the community for older individuals and persons with functional impairments.

(b) The sources of funding that may be used for this purpose include any nonprofit foundation, privately donated by individuals, and one-time-only state or federal-state operations funds. Nothing in this chapter shall be construed to authorize any expenditures that are not otherwise allowable by the originating source of the funding.

CHAPTER 11. STATE OMBUDSMAN

Article 1. Legislative Intent and Definitions

9700. (a) The Legislature recognizes that the department, pursuant to a grant from the federal government, has established a Long-Term Care Ombudsman Program.

(b) The Legislature declares that it is the public policy of this state to encourage community contact and involvement with elderly patients or residents of long-term care facilities or residential facilities through the use of volunteers and volunteer programs, and nothing in this chapter shall be construed as limiting or restricting the continuation of relationships established between ombudsmen, the elderly patients or residents of long-term care facilities or residential facilities, and the operators of these facilities.

(c) The Legislature finds that in order to comply with the federal Older Americans Act (42 U.S.C. Sec. 3001, et seq.), as amended, and to effectively assist residents, patients, and clients of long-term care facilities in the assertion of their civil and human rights, the structure, powers, and duties of the Long-Term Care Ombudsman Program must be specifically defined.

9701. Unless the contrary is stated or clearly appears from the context, the following definitions shall govern the interpretation of this chapter:

(a) "Approved organization" means any public agency or other appropriate organization that has been designated by the department to hear, investigate, and resolve complaints made by or on behalf of patients, residents, or clients of long-term care facilities

relating to matters that may affect the health, safety, welfare, and rights of these patients, residents, or clients.

(b) "Long-term care facility" means any of the following:

(1) Any nursing or skilled nursing facility, as defined in Section 1250 of the Health and Safety Code, including distinct parts of facilities that are required to comply with licensure requirements for skilled nursing facilities.

(2) Any residential care facility for the elderly as defined in Section 1569.2 of the Health and Safety Code.

(c) "Medical training" or "medical records training" means the completion of training as a physician, registered nurse, nurse practitioner, licensed vocational nurse, pharmacist, medical social worker, medical records technician, physician's assistant, or discharge planner.

(d) "Office" means the Office of the State Long-Term Care Ombudsman, including approved organizations.

(e) "Ombudsman coordinator" means the individual selected by the governing board or executive director of the approved organization to manage the day-to-day operation of the ombudsman program, including the implementation of federal and state requirements governing the office.

(f) "Resident," "patient," or "client" means an older or elderly individual residing in a long-term care facility.

(g) "State Ombudsman" means the State Long-Term Care Ombudsman.

Article 2. General Provisions

9710. There is within the department an Office of the State Long-Term Care Ombudsman.

9711. (a) The office shall be under the direction of a chief executive officer who shall be known as the State Long-Term Care Ombudsman. The State Ombudsman shall be appointed by the director and shall report directly to the director. He or she shall devote his or her entire time to the duties of his or her position, and shall receive the salary otherwise provided by law.

(b) Any vacancy occurring in the position of State Ombudsman shall be filled in the same manner as the original appointment. Whenever the State Ombudsman dies, resigns, becomes ineligible to serve for any reason, or is removed from office, the director shall appoint an acting State Ombudsman within 30 days, who shall serve until the appointment and qualification of the State Ombudsman's successor, but in no event longer than four months from the occurrence of the vacancy. The acting State Ombudsman shall exercise during this period all the powers and duties of the State Ombudsman pursuant to this chapter.

9712. (a) The State Ombudsman shall have training and experience in all of the following areas:

(1) Gerontology, long-term care, or other relevant social services programs.

(2) The legal system.

(3) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

(b) The State Ombudsman shall not have been employed by any long-term care facility within the three-year period immediately preceding this appointment.

(c) Neither the State Ombudsman nor any member of his or her immediate family shall have, or have had within the past three years, any pecuniary interest in long-term health care facilities.

9713. (a) Upon request of the office, the Attorney General shall represent the office or the department and the state in litigation concerning affairs of the office, unless the Attorney General represents another state agency, in which case the agency or the office shall be authorized to employ other counsel.

(b) The State Ombudsman may employ technical experts and other employees that, in his or her judgment, are necessary for the conduct of the business of the office.

9714. The office may solicit and receive funds, gifts, and contributions to support the operations and programs of the office. The office may form a foundation eligible to receive tax-deductible contributions to support the operations and programs of the office. The office shall not solicit or receive any funds, gifts, or contributions where the solicitation or receipt would jeopardize the independence and objectivity of the office.

9714.5. (a) The foundation formed pursuant to Section 9714 shall be under the direction and management of a five-member board of directors. One member shall be appointed by the Speaker of the Assembly, one member shall be appointed by the Senate Committee on Rules, and three members shall be appointed by the Governor. The members of the board shall each be experienced in the management, promotion, and funding of nonprofit charitable organizations.

(b) The board shall select from among its members a chair, a vice chair, and any other officers as it deems necessary.

(c) The members of the board shall serve without compensation, but shall be reimbursed for all necessary expenses actually incurred in the performance of their duties as directors.

(d) Three members of the board shall constitute a quorum for the purpose of conducting the board's business.

(e) By July 1 of each year, the board shall determine the amount of funds to be appropriated from the foundation to the office for the support of its operations and programs. Foundation funds may only be appropriated for the support of the operations and programs of the office.

9715. (a) No representative of the office shall be held liable for good faith performance of responsibilities under this chapter.

(b) No discriminatory, disciplinary, or retaliatory action shall be taken against any employee of a facility or agency, any patient, resident, or client of a long-term care facility, or any volunteer, for any communication made, or information given or disclosed, to aid the office in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith. This subdivision is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(c) All communications by a representative of the office, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, shall be privileged, and that privilege shall serve as a defense to any action in libel or slander.

(d) Any representative of the office shall be exempt from being required to testify in court as to any confidential matters, except as the court may deem necessary to enforce the provisions of this chapter.

9716. The department shall be responsible for activities that promote the development, coordination, and utilization of resources to meet the long-term care needs of older individuals, consistent with its mission. These responsibilities shall include establishing a statewide uniform reporting system to collect and analyze data relative to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The department shall submit the data to the state agency responsible for licensing or certifying long-term care facilities and to the federal agency on aging.

9717. (a) All advocacy programs and any programs similar in nature to the Long-Term Care Ombudsman Program that receive funding or official designation from the state shall cooperate with the office, where appropriate. These programs include, but are not limited to, the Patients' Rights Advocacy Program within the State Department of Mental Health, Protection and Advocacy, Inc., and Department of Rehabilitation Client Assistance Program.

(b) The office shall maintain a close working relationship with the Legal Services Development Program for the Elderly within the department.

(c) In order to ensure the provision of counsel for patients, residents, and clients of long-term care facilities, the department shall seek to establish effective coordination between the office and programs that provide legal services for the elderly, including, but not limited to, programs that are funded by the federal Legal Services Corporation or under the federal Older Americans Act, as amended.

9718. Every long-term care facility, as defined in paragraph (1) of subdivision (b) of Section 9701, shall post in a conspicuous location a notice of the name, address, and phone number of the office and the nearest approved organization, and a brief description of the

services provided by the office and the approved organization. The form of the notice shall be approved by the office.

9719. The office shall sponsor a meeting of representatives of approved organizations at least twice each year. The office shall provide training to these representatives as appropriate. Prior to acceptance by the office as designated ombudsmen, individuals shall receive a minimum of 36 hours of training and be approved by the office. Upon acceptance, designated ombudsmen shall receive a card issued by the department identifying the bearer as an official ombudsman. Each ombudsman shall receive a minimum of 12 hours of additional training annually.

9719.5. (a) (1) The department shall allocate all federal and state funds for local ombudsman programs according to the following distribution, but shall not allocate less than thirty-five thousand dollars ($35,000) per fiscal year, except for an area where there are less than 10 facilities and less than 500 beds.

(2) An allocation to an area where there are less than 10 facilities and less than 500 beds shall not be less than the base allocation contained in the Budget Act of 1986.

(3) After the base allocation, remaining funds shall be distributed in accordance with subdivision (b).

(b) (1) Fifty percent of the funds shall be allocated to each local program based on the number of facilities served by the program in proportion to the total number of facilities in the state.

(2) Forty percent of the funds shall be allocated based on the number of beds within the local program's area of service in proportion to the total number of beds in the state.

(3) Ten percent of the funds shall be allocated based on the total square miles within each local program's area of service in proportion to the total number of square miles in the state.

Article 3. Investigation and Resolution of Complaints

9720. (a) The office shall investigate and seek to resolve complaints and concerns communicated by, or on behalf of, patients, residents, or clients of any long-term care facility. This requirement shall not preclude the referral of other individuals' complaints and concerns that a representative becomes aware are occurring in the facility to the appropriate governmental agency. Complaint investigation shall be done in an objective manner to ascertain the pertinent facts.

(b) At the conclusion of any investigation of a complaint, the findings shall be reported to the complainant. If the office does not investigate a complaint, the complainant shall be notified in writing of the decision not to investigate and the reasons for the decision.

9720.5. The office shall give priority to investigations and complaint resolutions in 24-hour long-term care facilities.

9721. (a) The office may refer any complaint to any appropriate state or local government agency. The following state licensing authorities shall give priority to any complaint referred to them by the office, except that any complaint alleging an immediate threat to resident health and safety may be given first priority:

(1) Licensing and Certification Division of the State Department of Health Services.

(2) Community Care Licensing Division of the State Department of Social Services.

(3) Board of Examiners for Nursing Home Administrators.

(4) Board of Registered Nurses.

(5) Medical Board of California.

(6) Board of Pharmacy.

(7) Board of Vocational Nurse and Psychiatric Technician Examiners.

(b) Any licensing authority that responds to a complaint against a long-term care facility that was referred to the authority by the office shall forward to the office copies of related inspection reports and plans of correction and notify the office of any citations and civil penalties levied against the long-term care facility.

9722. (a) Representatives of the office shall have the right of entry to long-term care facilities for the purpose of hearing, investigating, and resolving complaints by, or on behalf of, and rendering advice to, elderly individuals who are patients or residents of the facilities at any time deemed necessary and reasonable by the State Ombudsman to effectively carry out this chapter.

(b) Nothing in this chapter shall be construed to restrict, limit, or increase any existing right of any organizations or individuals not described in subdivision (a) to enter, or provide assistance to patients or residents of, long-term care facilities.

(c) Nothing in this chapter shall restrict any right or privilege of any patient or resident of a long-term care facility to receive visitors of his or her choice.

9723. The State Ombudsman shall have access to any record of a state or local government agency that is necessary to carry out his or her responsibilities under this chapter, including any record rendered confidential under Section 1094 of the Unemployment Insurance Code or Section 10850.

9724. Notwithstanding Section 56 of the Civil Code, in order for the office to carry out its responsibilities under this chapter, the office shall have access to the medical or personal records of a patient or resident of a long-term care facility that are retained by the facility, under the following conditions:

(a) If the patient or resident has the ability to write, access may only be obtained by the written consent of the patient or resident.

(b) If the patient or resident is unable to write, oral consent may be given in the presence of a third party as witness.

(c) If the patient or resident is under a California guardianship or conservatorship of the person that provides the guardian or conservator with the authority to approve review of records, the office shall obtain the permission of the guardian or conservator for review of the records, unless any of the following apply:

(1) The existence of the guardianship or conservatorship is unknown to the office or the facility.

(2) The guardian or conservator cannot be reached within three working days.

(3) The office has reason to believe the guardian or conservator is not acting in the best interests of the ward or the conservatee.

(d) If the patient or resident is unable to express written or oral consent and there is no guardian or conservator, or the notification of the guardian or conservator is not applicable for reasons set forth in subdivision (c), inspection of records may be made by full-time state employees of the office ombudsman coordinator, and by ombudsmen qualified by medical training and with the approval of the ombudsman coordinator or the State Ombudsman, when there is sufficient cause for the inspection. The licensee may, at his or her discretion, permit other representatives of the office to inspect records in the performance of their official duties. Copies may be reproduced by the office. The licensee and facility personnel who disclose records pursuant to this subdivision shall not be liable for the disclosure. If investigation of records is sought pursuant to this subdivision, the ombudsman shall, upon request, produce a statement signed by the ombudsman coordinator authorizing the ombudsman to review the records.

(e) Facilities providing copies of records pursuant to this section may charge the actual copying cost for each page copied.

(f) Upon request by the office, a long-term care facility shall provide to the office the name, address, and telephone number of the conservator, legal representative, or next-of-kin of any patient or resident.

9725. All records and files of the office relating to any complaint or investigation made pursuant to this chapter and the identities of complainants, witnesses, patients, or residents shall remain confidential, unless disclosure is authorized by the patient or resident or his or her conservator of the person or legal representative, required by court order, or release of the information is to a law enforcement agency, public protective service agency, licensing or certification agency in a manner consistent with federal laws and regulations.

9726. (a) The office shall establish a toll-free telephone hotline, in Sacramento, to receive telephone calls concerning any crises discovered by any person in a long-term care facility, as defined in subdivision (b) of Section 9701. The telephone hotline established under this section shall be operated to include at least all of the following:

(1) The telephone hotline shall be available 24 hours a day, seven days a week.

(2) The operator shall respond to a crisis call by contacting the appropriate office, agency, or individual in the local community in which the crisis occurred.

(3) The toll-free hotline telephone number shall be posted conspicuously in either the facility foyer, lobby, residents' activity room, or other conspicuous location easily accessible to residents in each licensed facility by the licensee. The office shall issue, in conjunction with the State Department of Social Services and the State Department of Health Services, guidelines concerning the posting of the toll-free number. The posting shall, at a minimum, include the purpose of the hotline number.

(b) The office shall respond to hotline telephone calls.

(c) The toll-free telephone hotline shall be staffed in a manner consistent with available resources in the department. The department may contract for the services of individuals to staff the telephone hotline. The department shall seek to provide opportunities for older individuals to be employed to staff the hotline. The State Department of Health Services and the State Department of Social Services, and other appropriate departments, shall make available to the department and the office training and technical assistance as needed.

9726.1. The office may do any or all of the following:

(a) Advise the public of any inspection report, statements of deficiency, and plans of correction, for any long-term health care facilities within its service area.

(b) Promote visitation programs to long-term health care facilities within its service area.

(c) Establish and assist in the development of resident, family, and friends' councils.

(d) Sponsor other community involvement in long-term health care facilities.

(e) Present community education and training programs, to long-term health care facilities, human service workers, families, and the general public, about long-term care and residents' rights issues.

(f) Those programs created under this section that are held in a facility shall be developed in consultation with the facility. If the facility and the ombudsman cannot agree on these programs, the State Ombudsman may assist in resolving the dispute.

Article 4. Enforcement

9730. Anyone who willfully interferes with any lawful action of the office shall be immediately referred to the appropriate licensing authority, which shall respond within the legally prescribed time period.

9731. Notwithstanding the availability of statutory damages, this chapter shall not be construed to limit the ability of a court to issue equitable relief where the legal remedies provided would not be an adequate method of preventing or curing the particular injury in question.

9732. Any person who willfully interferes with any lawful action of the office shall be subject to a civil penalty of no more than one thousand dollars ($1,000), to be assessed by the director, who shall initiate the action, upon the request of the office, to collect the penalties in the jurisdiction in which the facility is located.

Article 5. Advisory Council

9740. The department shall establish an 11-member advisory council for the office. Members of the council shall be appointed by the director, and shall consist of representatives of community organizations, area agencies on aging, two long-term care providers, federal Older Americans Act funded direct services providers, the commission, the California Long-Term Care Ombudsman Association, county government, and other appropriate governmental agencies. The director shall make the appointments from lists of no less than five names submitted by each of the designated entities.

The advisory council shall provide advice and consultation to the State Long-Term Care Ombudsman Program on issues affecting the provision of ombudsman services and recommendations as appropriate. The advisory council shall meet at least three times annually. Representatives on the advisory council shall receive their actual and necessary travel and other expenses incurred in participation on the advisory council.

9741. At least 30 days prior to the designation of a new organization or agency as an approved organization, the department shall notify the advisory council for the purpose of soliciting comments regarding the designation.

CHAPTER 14. REGULATIONS

9750. The department may adopt regulations to implement this division 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 any emergency regulations following the date on which this revised division takes effect 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 division shall remain in effect for no more than 180 days.

SEC. 14. If Senate Bill 1482 is enacted during the 1996 portion of the 1995–96 Regular Session, either prior to, or subsequent to, the enactment of this act, and as enacted that act adds Section 9757.5 to the Welfare and Institutions Code, then Section 9757.5 of the Welfare and Institutions Code, as contained in Senate Bill 1482, shall prevail to the extent of a conflict with any provision either repealed or added by this act.

SEC. 15. If Assembly Bill 2412 is enacted during the 1996 portion of the 1995–96 Regular Session, either prior to, or subsequent to, the enactment of this act, then any provision of Assembly Bill 2412 shall prevail to the extent of a conflict with any provision either repealed or added by this act.

SEC. 16. Sections 1 to 15, inclusive, of this act shall become operative only if Senate Bill 1895 of the 1995–96 Regular Session of the Legislature is enacted and takes effect.

CHAPTER 1098

An act to add Section 23396.3 to the Business and Professions Code, relating to alcoholic beverages.

[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 23396.3 is added to the Business and Professions Code, to read:

23396.3. (a) A brewpub-restaurant license is an on-sale retail license which may be issued to a bona fide public eating place, as defined in Section 23038. The licensed premises shall have a minimum seven-barrel brewing capacity, and the licensee shall produce not less than 100 barrels nor more than 5,000 barrels of beer annually on the licensed premises. The license authorizes the sale of beer, wine, and distilled spirits for consumption on the premises, and the sale of beer produced by the brewpub-restaurant licensee for consumption on the premises. The license also authorizes the sale of beer produced by the licensed brewpub-restaurant licensee to a licensed beer and wine wholesaler, subject to the requirements of Chapter 12 (commencing with Section 25000). A brewpub-restaurant license does not authorize the sale, furnishing, or exchange of any alcoholic beverages with any other brewpub-restaurant licensee or any retail licensee in California.

(b) A brewpub-restaurant licensee shall purchase all beer, wine, or distilled spirits for sale on the licensed premises from a licensed wholesaler or winegrower, except for the beer produced by the brewpub-restaurant licensee on the licensed premises.

(c) A brewpub-restaurant licensee shall offer for sale on the licensed premises canned, bottled, or draft beer commercially available from licensed wholesalers.

(d) The fee for an original brewpub-restaurant license shall be the same as that specified in Section 23954.5 for an original on-sale general license.

(e) The annual license fee for a brewpub-restaurant license shall be the same as that for an on-sale general license.

(f) The limitations provided in Section 23816 on the number of licensed premises shall not apply to a brewpub-restaurant licensee.

CHAPTER 1099

An act to amend Sections 14105.98 and 14163 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 29, 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 State Department of Health Services and the disproportionate share hospital community work cooperatively in an effort to reduce or prevent the incidences of litigation against the department regarding disputes arising from disproportionate share formula, eligibility, and payment issues.

SEC. 2. Section 14105.98 of the Welfare and Institutions Code, as amended by Chapter 74 of the Statutes of 1996, is amended to read:

14105.98. (a) The following definitions shall apply for purposes of this section:

(1) "Disproportionate share list" means an annual list of disproportionate share hospitals that provide acute inpatient services issued by the department for purposes of this section.

(2) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund, created pursuant to Section 14163.

(3) "Eligible hospital" means a hospital included on a disproportionate share list, which is eligible to receive payment adjustments under this section with respect to a particular state fiscal year.

(4) "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.

(5) "Payment adjustment" or "payment adjustment amount" means an amount paid under this section for acute inpatient hospital services provided by a disproportionate share hospital.

(6) "Payment adjustment year" means the particular state fiscal year with respect to which payments are to be made to eligible hospitals under this section.

(7) "Payment adjustment program" means the system of Medi-Cal payment adjustments for acute inpatient hospital services established by this section.

(8) "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 payment adjustment year, including all Medi-Cal acute inpatient covered days of care for hospitals which are paid on a different basis than per diem payments.

(9) "Low-income utilization rate" means a percentage rate determined by the department in accordance with the requirements of Section 1396r-4(b)(3) of Title 42 of the United States Code, and included on a disproportionate share list.

(10) "Low-income number" means a hospital's low-income utilization rate rounded down to the nearest whole number, and included on a disproportionate share list.

(11) "1991 Peer Grouping Report" means the final report issued by the department dated May 1991, entitled "Hospital Peer Grouping."

(12) "Major teaching hospital" means a hospital that meets the definition of a university teaching hospital, major nonuniversity teaching hospital, or large teaching emphasis hospital as set forth on page 51 of the 1991 Peer Grouping Report.

(13) "Children's hospital" means a hospital that meets the definition of a children's hospital—state defined, as set forth on page 53 of the 1991 Peer Grouping Report, or which is listed in subdivision (a), or subdivisions (c) to (g), inclusive, of Section 16996.

(14) "Acute psychiatric hospital" means a hospital that meets the definition of an acute psychiatric hospital, a combination psychiatric/alcohol-drug rehabilitation hospital, or a psychiatric health facility, to the extent the facility is licensed to provide acute inpatient hospital service, as set forth on page 52 of the 1991 Peer Grouping Report.

(15) "Alcohol-drug rehabilitation hospital" means a hospital that meets the definition of an alcohol-drug rehabilitation hospital as set forth on page 52 of the 1991 Peer Grouping Report.

(16) "Emergency services hospital" means a hospital that is a licensed provider of basic emergency services as described in Sections 70411 to 70419, inclusive, of Title 22 of the California Code of Regulations, or that is a licensed provider of comprehensive

emergency medical services as described in Sections 70451 to 70459, inclusive, of Title 22 of the California Code of Regulations.

(17) "Medi-Cal day of acute inpatient hospital service" 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.

(18) "Total per diem composite amount" means, for each eligible hospital for a particular payment adjustment year, the total of the various per diem payment adjustment amounts to be paid to the hospital for each eligible day as calculated under the applicable provisions of this section.

(19) "Supplemental lump-sum payment adjustment" means a lump-sum amount paid under this section for acute inpatient hospital services provided by a disproportionate share hospital.

(20) "Projected total payment adjustment amount" means, for each eligible hospital for a particular payment adjustment year, the amount calculated by the department as the projected maximum total amount the hospital is expected to receive under the payment adjustment program for the particular payment adjustment year (including all per diem payment adjustment amounts and any applicable supplemental lump-sum payment adjustments).

(21) "To align the program with the federal allotment" means to modify the size of the payment adjustment program to be as close as reasonably feasible to, but not to exceed, the estimated or actual maximum state disproportionate share hospital allotment for the particular federal fiscal year for California under Section 1396r-4(f) of Title 42 of the United States Code.

(22) "Descending pro rata basis" means an allocation methodology under which a pool of funds is distributed to hospitals on a pro rata basis until one of the recipient hospitals reaches its maximum payment limit, after which all remaining amounts in the pool are distributed on a pro rata basis to the recipient hospitals that have not reached their maximum payment limits, until another hospital reaches its maximum payment limit, and which process is repeated until the entire pool of funds has been distributed among the recipient hospitals.

(23) "Secondary supplemental payment adjustment" means a payment adjustment amount, whether paid or payable, to an eligible hospital as a second type of supplemental distribution earned as of June 30, 1996, with respect to the 1995–96 payment adjustment year.

(24) "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) For each fiscal year commencing with 1991–92, there shall be Medi-Cal payment adjustment amounts paid to hospitals pursuant to this section. The amount of payments made and the eligible hospitals for each payment adjustment year shall be determined in accordance with the provisions of this section. The payments are intended to support health care services rendered by disproportionate share hospitals.

(c) For each fiscal year commencing with 1991–92, the department shall issue a disproportionate share list. The list shall be developed in accordance with subdivisions (e) and (f), and shall serve as a basis for payments under this section for the particular payment adjustment year.

(d) (1) Except as otherwise provided by this section, the payment adjustment amounts under this section shall be distributed as a supplement to, and concurrent with, payments on all billings for Medi-Cal acute inpatient hospital services that are paid through Medi-Cal claims payment systems on or after July 1, 1991. In connection with those billings, the department shall pay payment adjustment amounts in accordance with subdivision (g), (h), (i), or (j), as applicable, to any hospital qualifying under subdivision (e). In addition, the department shall pay to each of those hospitals any supplemental lump-sum payment adjustment amounts that are payable , and shall adjust payment amounts, in accordance with applicable provisions of this section. The nonfederal share of all payment adjustment amounts shall be funded by amounts from the fund. The department shall obtain federal matching funds for the payment adjustment program through customary Medi-Cal accounting procedures.

(2) As a limitation to paragraph (1), all payment adjustment amounts under this section, which are due with respect to billings paid through Medi-Cal claims payment systems on or after July 1, 1991, shall be suspended until the time federal approval is first obtained for the payment adjustment program 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), and (ii) confirmation by appropriate federal agencies regarding the availability of federal financial participation for the payment adjustment program 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. At the time federal approval is first obtained, the department shall proceed pursuant to subparagraphs (A) and (B) in connection with the suspended payment adjustment amounts.

(A) Except as provided by subdivision (*l*), or by any other subdivision of this section, any payment adjustment amounts which were suspended shall, within 60 days, be paid for all those billings paid through Medi-Cal claims payment systems during periods of time, on

or after July 1, 1991, for which federal approval is first effective for the payment adjustment program.

(B) Payment adjustment amounts shall not be paid in connection with any Medi-Cal billings which were paid through Medi-Cal claims payment systems during any period of time for which federal approval is not effective for the payment adjustment program.

(3) As a limitation to paragraph (1), the amendments to this section enacted during calendar year 1993 shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until such time as all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during calendar year 1993. At such time as all necessary federal approvals have been obtained, the amendments enacted during calendar year 1993, shall be implemented effective as of the earliest effective date permissible under federal law.

(4) As a limitation to paragraph (1), amendments to this section enacted during calendar year 1994 shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during calendar year 1994. When all necessary federal approvals have been obtained, the amendments enacted during calendar year 1994 shall be implemented effective as of the earliest effective date permissible under federal law. Notwithstanding any other provision of law, on or after the date that federal approval is obtained the payments made prior to that date with respect to the 1994–95 payment adjustment year or subsequent payment adjustment years shall be deemed nonfinal payments for purposes of this section and Section 14163. Any of those amounts paid or payable prior to that date shall then be compared to the payments that would have been made pursuant to the program changes as approved by the federal government for all periods of time permissible under federal law, and the difference, if any, shall be paid or recouped by the department, as appropriate.

(5) As a limitation to paragraph (1), amendments to this section enacted during June 1996 shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during June 1996. When all necessary federal approvals have been obtained, the amendments enacted during June 1996 shall be implemented effective as of the earliest effective date permissible under federal law. Notwithstanding any other provision of law, on or after the date that federal approval is obtained, the payments made prior to that date with respect to the 1995–96 payment adjustment year shall be deemed nonfinal payments for purposes of this section and Section 14163. Any of those

amounts paid or payable prior to that date shall then be compared to the payments that would have been made pursuant to the program changes as approved by the federal government for all periods of time permissible under federal law, and the difference, if any, shall be paid or recouped by the department, as appropriate.

(6) As a limitation to paragraph (1), any amendment of this section enacted during the period August 1, 1996, to September 30, 1996, inclusive, shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during the period August 1, 1996, to September 30, 1996, inclusive. When all necessary federal approvals have been obtained, the amendments enacted during the period August 1, 1996, to September 30, 1996, inclusive, shall be implemented effective as of the earliest effective date permissible under federal law. Notwithstanding any other provision of law, on or after the date that federal approval is obtained, the payments made prior to that date with respect to the 1996–97 payment adjustment year shall be deemed nonfinal payments for purposes of this section and Section 14163. Any of those amounts paid or payable prior to that date shall then be compared to the payments that would have been made pursuant to the program changes as approved by the federal government for all periods of time permissible under federal law, and the difference, if any, shall be paid or recouped by the department, as appropriate.

(e) To qualify for payment adjustment amounts under this section, a hospital shall have been included on the disproportionate share list for the particular payment adjustment year. The list shall consist of those hospitals which satisfy both of the following requirements:

(1) The hospital shall meet the federal requirements for disproportionate share status set forth in subsection (d) of Section 1396r-4 of Title 42 of the United States Code.

(2) Either of the following shall apply:

(A) The hospital's medicaid inpatient utilization rate, as defined in Section 1396r-4(b)(2) of Title 42 of the United States Code, shall be at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the state.

(B) The hospital's low-income utilization rate shall exceed 25 percent.

(f) (1) For the 1991–92 payment adjustment year, a disproportionate share list shall be issued by the department no later than 65 days after the enactment of this section. For subsequent payment adjustment years, a tentative listing shall be prepared by the department at least 60 days before the beginning of the particular payment adjustment year, and a disproportionate share list shall be issued no later than five days after the beginning of the particular

payment adjustment year. All state agencies shall take all necessary steps to supply the most recent data available to the department to meet these deadlines. 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 no 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 (except that for the 1991–92 payment adjustment year, the Office of Statewide Health Planning and Development shall provide data as it existed on the statewide data base file as of August 30, 1991), from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 or 128735 of the Health and Safety Code, for hospital fiscal years which 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 439.2 or 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 443.31 or 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.

(2) The disproportionate share list shall show all of the following:

(A) The name and license number of the hospital.

(B) Expressed as a percentage, the hospital's Medi-Cal utilization rate and low-income utilization rate as referred to in paragraph (2) of subdivision (e). The department shall determine these rates in accordance with paragraph (4).

(C) Based on the hospital's low-income utilization rate, the hospital's low-income number.

(3) The department shall determine a hospital's satisfaction of paragraph (1) of subdivision (e) based on the most recent annual data available, as it existed on the Office of Statewide Health Planning and Development statewide data base file as of February 1 of each year, and August 30 for the 1991–92 payment adjustment year, whether the data relates to operations under present or previous ownership.

(4) To determine a hospital's Medi-Cal inpatient utilization rate and low-income utilization rate for purposes of disproportionate share lists, the department shall utilize the same methodology, formulae, and data sources as set forth in connection with interim determinations in Attachment 4.19-A of the Medi-Cal state plan (effective on or about July 1, 1990), and as subsequently amended by Medi-Cal State Plan amendments relating to the payment adjustment program submitted to and approved by the federal Health Care Financing Administration, except that the following shall apply:

(A) The calculations shall not be interim, but shall be final for purposes of this section.

(B) To the extent permitted by federal law, the payment adjustment amounts provided to hospitals pursuant to this section shall not be included for any purpose in the calculations and determinations made pursuant to this section.

(C) Any other variation otherwise required by this section or by federal law.

(D) The data utilized by the department shall relate to the hospital under present and previous ownership. When there has been a change of ownership, a change in the location of the main hospital facility, or a material change in patient admission patterns during the twenty-four months immediately prior to the payment adjustment year, and the change has resulted in a diminution of access for Medi-Cal inpatients at the hospital, all as determined by the department, the department shall, to the extent permitted by federal law, utilize current data that are reflective of the diminution of access, even if the data are not annual data.

(E) Unless expressly provided otherwise by this section, the hospital's low-income utilization rate shall be based on the most recent annual data available from annual hospital reports existing on the Office of Statewide Health Planning and Development data base file as of February 1 of each year.

(F) (i) If, for the 1994–95 payment adjustment year, some or all of the annual data elements available to the department from hospital reports filed with the Office of Statewide Health Planning and Development for purposes of computing hospital low-income utilization rates are different than in prior years due to changes in data reporting requirements of the Office of Statewide Health Planning and Development or changes in other state health care programs, the department shall take such steps as are necessary to obtain from hospitals appropriate data in order to clarify the annual data filed with the Office of Statewide Health Planning and Development. This shall be done by the department in order to ensure that low-income utilization rates are determined in a manner as equivalent as possible to the approach and methodology used for the 1991–92 payment adjustment year.

(ii) The efforts of the department to obtain and apply data for the purposes described in clause (i) shall include a survey to collect, from one or more hospitals, any data necessary to calculate the low-income utilization rates in accordance with clause (i). The purpose for the survey shall be to clarify the data already included by hospitals in their annual reports submitted to the Office of Statewide Health Planning and Development. The data requested by the department in the survey may include, among other things, information regarding the manner in which payments made to hospitals under this section were reported by the hospitals to the Office of Statewide Health Planning and Development. The data requested may also include information regarding the manner in which hospitals reported figures relating to charity care, bad debts, and amounts received in connection with state or local indigent care programs.

(iii) In connection with any survey conducted under clause (ii), the department may require that hospitals submit responses in accordance with a deadline established by the department, and that the responses be supported by a verification of a hospital representative. Should any hospital not respond on a timely basis in accordance with protocols established by the department, the department shall utilize prior year data, adjusted by the department in its discretion, to calculate the hospital's low-income utilization rate.

(G) Notwithstanding any other provision of law, all payment adjustment amounts, including per diem payment adjustment amounts and supplemental lump-sum payment adjustments, paid or payable to a hospital under this section, shall be recorded on an accrual basis of accounting in reports filed by the hospital with the Office of Statewide Health Planning and Development or the department.

(5) For purposes of payment adjustment amounts under this section, each disproportionate share list shall be considered complete when issued by the department pursuant to paragraph (1). 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.

(6) No Medi-Cal State Plan amendment of the type referred to in paragraph (4) shall be valid if inconsistent with this section. For those Medi-Cal State Plan amendments of the type referred to in paragraph (4), to be initially submitted to the federal Health Care Financing Administration on or after the operative date of this paragraph, these amendments shall be provided to representatives of the hospital industry, including, but not limited to, the California Healthcare Association, as soon as possible, but in no event less than 30 days prior to submission of the amendment to the federal Health Care Financing Administration. If, in the public interest, the director

determines that exigent circumstances necessitate that the 30-day requirement cannot be met, the director shall immediately in writing advise the chairperson of the Senate Committee on Health and Human Services and the Assembly Committee on Health of the exigent circumstances and the department's timetable for providing the amendment to the hospital industry.

(g) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is a major teaching hospital, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of three hundred dollars ($300).

(2) The sum of the following amounts, minus three hundred dollars ($300):

(A) A ninety dollar ($90) payment adjustment for each percentage point, from 25 percent to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A seventy dollar ($70) payment adjustment for each percentage point, from 30 percent to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A fifty dollar ($50) payment adjustment for each percentage point, from 35 percent to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A thirty dollar ($30) payment adjustment for each percentage point, from 45 percent to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A ten dollar ($10) payment adjustment for each percentage point, from 65 percent to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(3) If the sum calculated under paragraph (2) is less than zero, it shall be disregarded for payment purposes.

(h) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is a children's hospital, the hospital shall be paid the sum of four hundred fifty dollars ($450), except as limited by other applicable provisions of this section.

(i) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the

payment adjustment year, is an acute psychiatric hospital or an alcohol-drug rehabilitation hospital, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of fifty dollars ($50).

(2) The sum of the following amounts, minus fifty dollars ($50):

(A) A ten dollar ($10) payment adjustment for each percentage point, from 25 to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A seven dollar ($7) payment adjustment for each percentage point, from 30 to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A five dollar ($5) payment adjustment for each percentage point, from 35 to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A two dollar ($2) payment adjustment for each percentage point, from 45 to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A one dollar ($1) payment adjustment for each percentage point, from 65 to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(3) If the sum calculated under paragraph (2) is less than zero, it shall be disregarded for payment purposes.

(j) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital does not meet the criteria for receiving payments under subdivision (g), (h), or (i) above, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of one hundred dollars ($100).

(2) If the hospital is an emergency services hospital at the time the payment adjustment is paid, a two hundred dollar ($200) payment adjustment.

(3) The sum of the following amounts minus one hundred dollars ($100), and minus an additional two hundred dollars ($200) if the hospital is an emergency services hospital at the time the payment adjustment is paid:

(A) A forty dollar ($40) payment adjustment for each percentage point, from 25 percent to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A thirty-five dollar ($35) payment adjustment for each percentage point, from 30 percent to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A thirty dollar ($30) payment adjustment for each percentage point, from 35 percent to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A twenty dollar ($20) payment adjustment for each percentage point, from 45 percent to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A fifteen dollar ($15) payment adjustment for each percentage point, from 65 percent to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(4) If the sum calculated under paragraph (3) is less than zero, it shall be disregarded for payment purposes.

(k) (1) For any particular payment adjustment year, no hospital may qualify for payments under more than one subdivision among subdivisions (g), (h), (i), and (j). If any hospital qualifies under more than one subdivision, the department shall determine which subdivision shall apply for payments.

(2) For each payment adjustment year beginning with 1992–93, the total applicable per diem payment adjustment amount calculated for each eligible hospital pursuant to subdivision (g), (h), (i), or (j) shall be adjusted by a percentage identical to the percentage increase in transfer amounts that the department has authorized for use pursuant to paragraph (1) of subdivision (h) of Section 14163 for the particular fiscal year.

(3) If an eligible hospital ordinarily is paid by or on behalf of the department for Medi-Cal acute inpatient hospital services based on a payment methodology other than per diem payments, the eligible hospital shall receive payment adjustment amounts under subdivision (g), (h), (i), or (j) of this section based on its approved Medi-Cal days of acute inpatient hospital care, in the same fashion as all other eligible hospitals under this section.

(*l*) (1) (A) In determining Medi-Cal days of service for purposes of payment adjustments under this section, the department shall recognize all acute inpatient hospital days of service required to be taken into account under federal law.

(B) For the 1992–93 payment year, the department may consider the Medi-Cal days of service provided by the qualifying hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in achieving their maximum payments.

(C) For 1993–94 and subsequent payment years, the department may consider the Medi-Cal days of service provided by hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in determining the Medi-Cal utilization rate and the maximum days of payment. Additionally, the department may consider the days of service provided by the qualifying hospitals for Medi-Cal patients covered by the prepaid

health plans contracting directly with the Medi-Cal program in achieving their maximum payments in those payment years.

(D) In order to meet the requirements of subparagraph (C), the Office of Statewide Health Planning and Development shall provide to the department quarterly access to all data elements on the edited and unedited confidential patient discharge data files, including Social Security account numbers. The department shall match these data with the department's Medi-Cal Eligibility Data System files to extract any data necessary to meet the requirements of subparagraph (C). The department shall maintain the confidentiality of all patient discharge data to the same extent as is required of the Office of Statewide Health Planning and Development.

(2) Notwithstanding paragraph (1), there shall be, for each eligible hospital, a maximum limit on the number of Medi-Cal acute inpatient hospital days for which payment adjustment amounts may be paid under this section with respect to each payment adjustment year. The maximum limit shall be that number of days that equals 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 preceding the beginning of the payment adjustment year.

(m) No payment rate for any service rendered by any hospital under the Medi-Cal selective provider contracting program shall be reduced as a result of this section.

(n) Notwithstanding any other provision of law, to the extent consistent with federal law, and except as provided by this section, no maximum payment limit shall be placed on the amount of Medi-Cal payment adjustments which may be made to disproportionate share hospitals. The payments made to disproportionate share hospitals pursuant to this section and Section 14105.99 shall not cause any other amounts paid or payable to a hospital to be deemed in excess of any applicable maximum payment limit.

(o) The department shall promptly seek any necessary federal approvals in order to implement this section, including any amendments. Pursuant to Section 1396r-4 of Title 42 of the United States Code, and related federal medicaid statutes and regulations, payment adjustment systems for inpatient hospital services rendered by disproportionate share hospitals shall be included in a state's medicaid plan. Therefore, the department shall, prior to the end of the calendar quarter during which this section is enacted or amended, submit for federal approval an amendment to the Medi-Cal State Plan in connection with the payment adjustment program.

(p) (1) The department shall compute, prior to the beginning of each payment adjustment year, the projected size of the payment adjustment program for the particular payment adjustment year. To do so, the department shall determine the projected total payment

adjustment amount for each eligible hospital, and shall add these amounts together to determine the projected total size of the program. To the extent this projected total figure for the program exceeds the portion of the maximum state disproportionate share hospital allotment for California under federal law that the department anticipates will be available for the period in question, the department shall reduce the total per diem composite amounts of the various eligible hospitals in the fashion described below so that the allotment in question will not be exceeded.

(2) As an initial step, all total per diem composite amounts for the entire payment adjustment year shall be reduced proportionately not to exceed 2 percent of each total per diem composite amount.

(3) If the reductions authorized by paragraph (2) are insufficient to align the program with the federal allotment for California, then, to the extent permitted by federal law, the following shall apply:

(A) The adjusted total per diem composite amounts, as calculated under paragraph (2), shall remain in effect for each eligible hospital whose low-income number is 30 percent or more.

(B) The adjusted total per diem composite amounts, as calculated under paragraph (2), for all other eligible hospitals shall be further reduced proportionately to align the program with the federal allotment, but in no event to a level that is less than 65 percent of the total per diem composite amount that would have been payable to the eligible hospital had no reductions taken place.

(4) If the steps set forth in paragraph (3) are not permissible under federal law, or are not adequate to align the program with the federal allotment, the adjusted total per diem composite amounts for all eligible hospitals for the entire payment adjustment year shall be further reduced proportionately to align the program with the federal allotment, but in no event to a level that would result in adjusted total per diem composite amounts that are less than 65 percent of the total per diem composite amounts that would have been payable had no reductions taken place.

(5) When all eligible hospitals have been reduced to the 65-percent level set forth in paragraphs (3) and (4), the adjusted total per diem composite amounts for all eligible hospitals shall be further reduced proportionately as necessary to align the program with the federal allotment.

(6) This subdivision shall not apply to the 1995–96 payment adjustment year.

(q) (1) If it is necessary to apply the provisions of paragraph (3) of subdivision (p) at any time, the department shall, as soon as practicable, evaluate why the insufficiency arose and identify the projected occurrence and duration of any future insufficiencies.

(2) If the department determines as a result of the evaluations under paragraph (1) that (A) implementation of paragraph (3) of subdivision (p) will likely be necessary to resolve additional insufficiencies for the current payment adjustment year or the next

payment adjustment year; and (B) that the level of federal financial participation realized by the payment adjustment program, for the current payment adjustment year as a whole, will be less than 30 percent of the percentage of federal financial participation that normally is applicable for Medi-Cal expenditures for acute inpatient hospital services, and that the level of federal financial participation for the payment adjustment program is expected to continue to remain below that 30 percent level for the next payment adjustment year as a whole, the department shall, as soon as practicable, implement paragraphs (3) and (4).

(3) If the department determines that the circumstances described in paragraph (2) are present, the payment adjustment program shall be terminated, effective as of the earliest date permissible under federal law. In that event, all installment payments to the fund which are already due pursuant to Section 14163 at the time of the department's determination shall remain due, and shall be collected by the Controller. However, installment payments which are not yet due at that time shall not become due.

(4) Within 90 days after the termination of the payment adjustment program, as referred to in paragraph (3), or as soon as practicable, the department shall determine whether any amounts remain in the fund which are not needed to pay prior payment adjustment amounts under this section. If remaining amounts exist in the fund, they shall be refunded to transferor entities on a pro rata basis, within 45 days after the date of the department's determination.

(r) (1) The state shall be held harmless from any federal disallowance resulting from payments made under this section, and from payments made to hospitals based on transfers accepted by the department under Section 14164. Any hospital that has received payments under this section, or based on transfers accepted by the department under Section 14164, shall be liable for any audit exception or federal disallowance only with respect to the payments made to that hospital. The department shall recoup from a hospital the amount of any audit exception or federal disallowance in the manner authorized by applicable laws and regulations.

(2) Notwithstanding any other provisions of law, if any payment adjustment that has been paid, or that otherwise would have been payable to an eligible hospital under this section, exceeds the OBRA 1993 payment limitation for the particular hospital, the department shall withhold or recoup the payment adjustment amount that exceeds the limitation. The nonfederal component of the amount withheld or recouped shall be redeposited in, or shall remain in, the fund, as applicable, until used for the purposes described in paragraph (2) of subdivision (j) of Section 14163.

(s) (1) The department may utilize existing administrative appeal procedures for purposes of any appealable matter that arises

under the payment adjustment program. The matters that may be appealed shall be limited to those related to the following:

(A) Paragraph (5) of subdivision (f).

(B) State audit disallowances of amounts paid to hospitals under the payment adjustment program.

(2) Calculations which are final pursuant to paragraph (4) or (5) of subdivision (f) or the procedures or data on which those calculations are based, shall not be appealed.

(t) (1) Except as provided in paragraph (2), the department shall take all appropriate steps permitted by law and the Medi-Cal State Plan to ensure the following for all years of the payment adjustment program:

(A) That well baby (nursery) days and acute administrative days are included in the payment adjustment program in the same fashion as all other Medi-Cal days of acute inpatient hospital service.

(B) That, to the same extent as any other Medi-Cal days of acute inpatient hospital service, well baby (nursery) days and acute administrative days are included as payable days under the payment adjustment program and in the total of annualized Medi-Cal inpatient paid days.

(C) That, if pursuant to paragraph (2), any well baby (nursery) days or acute administrative days are not included in the payment adjustment program for payment purposes for any parts of the 1992–93 or 1993–94 payment adjustment years, all such days are nevertheless included in the total of annualized Medi-Cal inpatient paid days for all purposes under the payment adjustment program, unless otherwise barred by paragraph (2).

(2) In no event shall paragraph (1) be implemented in a fashion that is inconsistent with federal medicaid law or the Medi-Cal State Plan.

(u) (1) For the 1993–94 payment adjustment year, each eligible hospital shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the hospital being included on the disproportionate share list as of September 30, 1993. For purposes of federal medicaid rules, including Section 447.297(d) of Title 42 of the Code of Federal Regulations, the supplemental payment adjustments shall be applicable to the federal fiscal year that ends on September 30, 1993.

(2) The availability of supplemental payment adjustments under this subdivision shall be determined as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1993 federal fiscal year. This final allotment is two billion one hundred ninety-one million four hundred fifty-one thousand dollars ($2,191,451,000), as specified at page 43186 of Volume 58 of the Federal Register.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are

applicable to the 1993 federal fiscal year shall be determined. The applicability of the per diem payment adjustment amounts to the 1993 federal fiscal year shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3).

(3) The amount of the supplemental lump-sum payment adjustment to each eligible hospital shall be computed as follows:

(A) The projected total of all per diem payment adjustment amounts payable to each particular eligible hospital under this section for the 1993–94 payment adjustment year shall be determined. For each hospital, this figure shall be identical to the figure used for the same hospital in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year.

(B) The projected totals for all eligible hospitals determined under subparagraph (A) shall be added together to determine an aggregate total of all projected per diem payment adjustments for 1993–94 payment adjustment year. This figure shall be identical to the aggregate figure for all hospitals used in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year.

(C) The figure determined for each eligible hospital under subparagraph (A) shall be divided by the aggregate figure determined under subparagraph (B), yielding a percentage figure for each hospital.

(D) The percentage figure determined for each hospital under subparagraph (C) shall be multiplied by the positive remainder calculated under subparagraph (C) of paragraph (2).

(E) The product as so determined for each eligible hospital under subparagraph (D) shall be the supplemental lump-sum payment adjustment amount payable to the particular hospital.

(4) The department shall make partial payments of the supplemental lump-sum payment adjustments to eligible hospitals on or before January 1, 1994. The department shall make final calculations regarding the supplemental lump-sum payments based on data available as of March 1, 1994, and shall distribute the final payments promptly thereafter.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections

447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(v) (1) For the 1993–94 payment adjustment year, each eligible hospital that remains in operation as of June 30, 1994, shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the hospital being a disproportionate share hospital in operation as of that date.

(2) The availability of supplemental lump-sum payment adjustments under this subdivision shall be determined by the department as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1994 federal fiscal year. This final allotment is two billion one hundred ninety-one million four hundred fifty-one thousand dollars ($2,191,451,000), as specified on page 22676 of Volume 59 of the Federal Register.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the period October 1, 1993, through June 30, 1994, shall be determined. The applicability of the per diem payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3).

(3) The amount of the supplemental lump-sum payment adjustment to each hospital shall be computed as follows:

(A) The projected total of all other payment adjustment amounts payable to each particular hospital under this section applicable to the 1993–94 payment adjustment year shall be determined. For each hospital, this figure shall be identical to the sum of the figures used for the same hospital in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(B) The projected totals for all hospitals determined under subparagraph (A) shall be added together to determine an aggregate total. This aggregate total shall be identical to the aggregate figure for all hospitals used in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(C) The figure determined for each hospital under subparagraph (A) shall be divided by the aggregate figure determined under subparagraph (B), yielding a percentage figure for each hospital.

(D) The percentage figure determined for each hospital under subparagraph (C) shall be multiplied by the positive remainder calculated under subparagraph (C) of paragraph (2).

(E) The product determined under subparagraph (D) for each hospital shall be the supplemental lump-sum payment adjustment amount payable to the particular hospital, which shall be payable because the facility is a disproportionate share hospital in operation as of June 30, 1994.

(4) The department shall make interim and final payments of the supplemental lump-sum payment adjustments to hospitals on or before October 31, 1994.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(w) (1) For the 1994–95 payment adjustment year, each eligible hospital that remains in operation as of June 30, 1995, shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the hospital being a disproportionate share hospital in operation as of that date.

(2) The availability of supplemental lump-sum payment adjustments under this subdivision shall be determined by the department as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1995 federal fiscal year.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the period October 1, 1994, through June 30, 1995, shall be determined. The applicability of the per diem payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3).

(3) The amount of the supplemental lump-sum payment adjustment to each hospital shall be computed as follows:

(A) The projected total of all other payment adjustment amounts payable to each particular hospital under this section applicable to the 1994–95 payment adjustment year shall be determined. For each hospital, this figure shall be identical to the sum of the figures used for the same hospital in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1994–95 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(B) The projected totals for all hospitals determined under subparagraph (A) shall be added together to determine an aggregate total. This aggregate total shall be identical to the aggregate figure for all hospitals used in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1994–95 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(C) The figure determined for each hospital under subparagraph (A) shall be divided by the aggregate figure determined under subparagraph (B), yielding a percentage figure for each hospital.

(D) The percentage figure determined for each hospital under subparagraph (C) shall be multiplied by the positive remainder calculated under subparagraph (C) of paragraph (2).

(E) The product as so determined under subparagraph (D) for each hospital shall be the supplemental lump-sum payment adjustment amount payable to the particular hospital, which shall be payable because the facility is a disproportionate share hospital in operation as of June 30, 1995.

(4) The department shall make interim and final payments of the supplemental lump-sum payment adjustments to hospitals on or before October 31, 1995.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(x) (1) With respect to per diem payment adjustments otherwise payable in connection with the period of July 1 through September 30 of the 1994–95 payment adjustment year, payment adjustment amounts shall be adjusted as described in paragraph (2).

(2) No per diem payment adjustment amounts shall be payable in connection with the period of July 1 through September 30 of the 1994–95 payment adjustment year. The Medi-Cal days of acute inpatient hospital service paid by or on behalf of the department that otherwise would have given rise to payment adjustment amounts with respect to this period of time shall not count toward the maximum limit set forth in paragraph (2) of subdivision (*l*).

(y) Notwithstanding any other provision of law, except subdivision (z), the payment adjustment program for the 1995–96 payment adjustment year shall be structured as set forth below.

(1) (A) The department shall, in the manner used for prior years, compute the projected total payment adjustment amounts for all eligible hospitals, by determining for each eligible hospital its total per diem composite amount and multiplying that figure by 80 percent of the hospital's annualized Medi-Cal inpatient paid days.

(B) The products of the calculations under subparagraph (A) for all eligible hospitals shall be added together. The sum of all these figures shall be the unadjusted projected total payment adjustment program for the 1995–96 payment adjustment year.

(2) The remaining amount available as part of the state disproportionate share hospital allotment for California under applicable federal rules for July 1995 through September 1995 (as part of the 1995 federal fiscal year) shall be recognized as being zero.

(3) The department shall estimate what the state disproportionate share hospital allotment for California will be for the 1996 federal fiscal year under applicable federal rules. The estimate shall not exceed the allotment that was applicable for California for the 1995 federal fiscal year.

(4) The estimate identified by the department under paragraph (3) shall be reduced by subtracting the total amount of the supplemental lump-sum payments paid or payable under subdivisions (v) and (w).

(5) The remainder determined under paragraph (4) shall be added to the amount determined under paragraph (2). The total of those two amounts shall be the unadjusted tentative size of the payment adjustment program for the 1995–96 payment adjustment year.

(6) The total per diem composite amount computed for each eligible hospital under subparagraph (A) of paragraph (1) shall be modified as follows:

(A) The department shall reduce the total per diem composite amount for each eligible hospital by multiplying the amount by an identical percentage. The percentage figure to be used for this purpose shall be that percentage that is derived by dividing the amount determined under paragraph (5) by the unadjusted projected total payment adjustment program amount determined under subparagraph (B) of paragraph (1).

(B) The percentage figure derived under subparagraph (A) shall be applied to the total per diem composite amount for each eligible hospital, yielding an adjusted total per diem composite amount for each hospital for the 1995–96 payment adjustment year.

(C) (i) The adjusted total per diem composite amount determined under subparagraph (B) for each eligible hospital shall be multiplied by 80 percent of the hospital's annualized Medi-Cal inpatient paid days.

(ii) The amount computed for each hospital under clause (i) shall be compared to the OBRA 1993 payment limitation that, in accordance with applicable provisions of the Medi-Cal State Plan, the department has computed for the particular hospital.

(iii) Where the amount computed under clause (i) for the particular hospital is less than the OBRA 1993 payment limitation for the hospital, the amount computed under clause (i) shall be used for purposes of clause (v).

(iv) Where the amount computed under clause (i) for the particular hospital exceeds the OBRA 1993 payment limitation for the hospital, the amount computed under clause (i) shall be reduced to an amount equal to the OBRA 1993 payment limitation for the particular hospital. The amount as so reduced shall be used for purposes of clause (v).

(v) The amount for each hospital, as determined under either clause (iii) or clause (iv), as applicable, shall be the adjusted projected total payment adjustment amount for the hospital for the 1995–96 payment adjustment year.

(D) The adjusted figures computed for all eligible hospitals under subparagraph (C) shall be added together, yielding the adjusted tentative size of the payment adjustment program for the 1995–96 payment adjustment year.

(7) The adjusted tentative size of the payment adjustment program for the 1995–96 payment adjustment year as determined under subparagraph (D) of paragraph (6), and the adjusted projected total payment adjustment amount for each eligible hospital, as determined under subparagraph (C) of paragraph (6), shall be distributed as follows:

(A) No per diem payment adjustment amounts shall be payable in connection with the period of July 1 through September 30 of the 1995–96 payment adjustment year. The Medi-Cal days of acute inpatient hospital service paid by or on behalf of the department that otherwise would have given rise to payment adjustment amounts with respect to this period of time shall not count toward the maximum limit set forth in paragraph (2) of subdivision (*l*).

(B) For all eligible hospitals, the adjusted per diem composite amounts (as determined under subparagraph (B) of paragraph (6)) shall be the amounts payable with respect to the period of October 1 through June 30 of the 1995–96 payment adjustment year, subject to the applicable provisions of subdivision (z).

(8) For the 1995–96 payment adjustment year, each eligible hospital that remains in operation as of June 30, 1996, shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date. The availability of supplemental lump-sum payment adjustments under this paragraph shall be determined by the department as follows:

(A) The adjusted projected total payment adjustment amount for each hospital, as determined under subparagraph (C) of paragraph (6), shall be identified.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the period July 1, 1995, through June 30, 1996, shall be determined for each hospital, taking into account subparagraph (A) of paragraph (7). The applicability of the per diem payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The amount determined under subparagraph (B) for each hospital shall be subtracted from the amount identified under subparagraph (A) for each hospital. If the remainder is a positive figure for the particular hospital, the supplemental lump-sum payment adjustment for the hospital shall be the positive remainder amount, which shall be payable because the facility is a disproportionate share hospital in operation as of June 30, 1996.

(D) The department shall make interim and final payments of the supplemental lump-sum payment adjustments under this paragraph on or before September 30, 1996.

(9) Except as provided in subparagraph (C), for the 1995–96 payment adjustment year each eligible hospital that remains in operation as of June 30, 1996, shall also be eligible to receive a secondary supplemental payment adjustment, which shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date. The availability of secondary supplemental payment adjustments under this paragraph shall be determined by the department as follows:

(A) The maximum amount of secondary supplemental payment adjustments available pursuant to this paragraph shall be calculated as follows:

(i) The total amount of all per diem payment adjustment amounts, whether paid or payable, for the 1995–96 payment adjustment year, as determined under subparagraph (B) of paragraph (8), shall be identified.

(ii) The total amount of all supplemental lump-sum payment adjustments, whether paid or payable, as determined under subparagraph (C) of paragraph (8), shall be identified.

(iii) The department shall estimate the total amount of payment adjustments under this section that it anticipates will be applicable to the period July 1, 1996, through September 30, 1996. The applicability of the payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(iv) The department shall identify the amount of the final maximum state disproportionate share hospital allotment for California for the 1996 federal fiscal year under applicable federal rules. The amount identified shall not exceed two billion one hundred ninety-one million four hundred fifty-one thousand dollars ($2,191,451,000).

(v) The amounts identified or estimated under clauses (i), (ii), and (iii) shall be added together, and the sum of these amounts shall be subtracted from the amount identified under clause (iv). The remainder determined from this calculation, or the amount of two hundred million dollars ($200,000,000), whichever is less, shall be the maximum amount available for secondary supplemental payment adjustments under this paragraph.

(B) The maximum amount available for secondary supplemental payment adjustments, as identified under clause (v) of subparagraph (A), shall be distributed to eligible hospitals as follows:

(i) The total amount of all per diem payment adjustments and supplemental lump-sum payment adjustments relating to the 1995–96 payment adjustment year, whether paid or payable, shall be identified for each eligible hospital. However, notwithstanding any other provision of law, those hospitals referred to in subparagraph (C) shall not be included in this step, and shall not receive any secondary supplemental payment adjustments, as described in subparagraph (C).

(ii) For purposes of secondary supplemental payment adjustments, the eligible hospitals shall be classified into various groups. No hospital may qualify for more than one of these groups. Notwithstanding subclause (II), the hospitals described in subparagraph (C) shall not be included in any of these groups. The following groups of hospitals shall be recognized:

(I) "State of California hospitals," which shall include all eligible hospitals that, as of July 1, 1995, were licensed to the State of California or to the University of California.

(II) "County hospitals," which shall include all eligible hospitals that, as of July 1, 1995, were licensed to a county or a city and county, but shall exclude those hospitals referred to in subparagraph (C).

(III) "Other public hospitals," which shall include all eligible hospitals that, as of July 1, 1995, were licensed to a local hospital district, a local health authority, a city, or any other noncounty political subdivision of the state.

(IV) "Children's hospitals," which shall include all eligible hospitals that, as of July 1, 1995, were included in the children's hospital group under subdivision (h).

(V) "Other nonpublic hospitals," which shall include all eligible hospitals that are not included in any group described in subclauses (I) through (IV).

(iii) The amount determined to be the maximum amount of secondary supplemental payment adjustments under clause (v) of

subparagraph (A) shall first be allocated among the groups of hospitals referred to in clause (ii), as follows:

(I) "State of California hospitals": 64.35 percent of the maximum amount.

(II) "County hospitals": 18.095 percent of the maximum amount.

(III) "Other public hospitals": 0.65 percent of the maximum amount.

(IV) "Children's hospitals": 6.755 percent of the maximum amount.

(V) "Other nonpublic hospitals": 10.15 percent of the maximum amount.

(iv) (I) The amount of funds allocated pursuant to clause (iii) to each of the particular groups of hospitals referred to in clauses (ii) and (iii) shall then be distributed as secondary supplemental payment adjustments among the eligible hospitals within each particular group. The secondary supplemental distributions shall be made on a descending pro rata basis within each group. Each cycle of the descending pro rata distribution shall be considered to be a phase of the process. As described in subclauses (II) to (V), inclusive, in each phase of the descending pro rata distribution, the pro rata share of the distribution to each hospital that remains eligible to receive additional distributions shall be computed based on the ratio of the total payment adjustments that the particular hospital has already earned under the payment adjustment program for the 1995–96 payment adjustment year, as compared to the total payment adjustments already earned by the other hospitals in the particular group that remain eligible to receive the additional distributions.

(II) For the first phase, the total amount of payment adjustments under this section for the 1995–96 payment adjustment year, including all per diem payment adjustments and all supplemental lump-sum payment adjustments, that are determined by the department as already being paid or payable to each hospital eligible for the distribution shall be determined.

(III) The figures determined under subclause (II) for each hospital in the particular group shall be added together to determine an aggregate total.

(IV) The figures determined for each hospital under subclause (II) shall be divided by the aggregate total determined under subclause (III), yielding a percentage figure for each hospital.

(V) The percentage figure determined for each hospital under subclause (IV) shall be applied to the maximum portion of the funds allocated to the particular group under clause (iii) that can be distributed in the particular phase until a hospital in the particular group reaches the limitation set forth in clause (v).

(v) For each hospital, no secondary supplemental payment adjustment shall be paid to the extent that either of the following conditions exist:

(I) The secondary supplemental payment adjustment would cause the total of all payment adjustments to the hospital under this section relating to the 1995–96 payment adjustment year to exceed the amount that is the product of multiplying 0.95 times the particular hospital's OBRA 1993 payment limitation for the 1995–96 payment adjustment year, as computed by the department in accordance with applicable provisions of the Medi-Cal State Plan.

(II) Without regard to any secondary supplemental payment adjustment, the hospital has already received or has earned payment adjustments relating to the 1995–96 payment adjustment year that equal or exceed the product referred to in subclause (I).

(vi) Any secondary supplemental payment adjustment amount, or portion thereof, that otherwise would have been payable to a particular hospital under this paragraph, but that is barred by the limitation described in clause (v), shall be distributed by the department through additional phases of the descending pro rata distribution process to those hospitals within the same group, as set forth in clauses (ii) and (iii), as the particular hospital. For each additional phase, the mathematical steps referred to in subclauses (II) to (V), inclusive, of clause (iv) shall be repeated for those hospitals that have not reached the limitation set forth in clause (v). The phases shall continue until the funds allocated to the particular group under clause (iii) have been fully exhausted. No such distribution, however, shall be in an amount that would cause any hospital to exceed the limitation set forth in clause (v).

(C) Notwithstanding any other provision of law, prior to the allocation or distribution of any secondary supplemental payment adjustments, hospitals that, as of July 1, 1995, were part of a county-operated health system of three or more eligible hospitals licensed to the county, shall be deemed to have reached the limitations on total payments described in subclause (II) of clause (v) of subparagraph (B). Data regarding payment adjustments earned by these hospitals with respect to the 1995-96 payment adjustment year, whether paid or payable, shall be included in the computations under subparagraph (A), but excluded from the computations under subparagraph (B).

(D) The department shall make payments of the secondary supplemental payment adjustments to hospitals on or before November 30, 1996.

(10) The final total amount of per diem payment adjustments paid by the department for the 1995–96 payment adjustment year, plus the final total amount of supplemental lump-sum payment adjustments and secondary supplemental payment adjustments paid by the department for the 1995–96 payment adjustment year, shall be the maximum size of the payment adjustment program for the 1995–96 payment adjustment year.

(11) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State

Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(z) (1) (A) Notwithstanding any other provision of law (except for subparagraph (B)), all Medi-Cal days of acute inpatient hospital service paid by or on behalf of the department that give rise to payment adjustment amounts with respect to the period October 1, 1994, through June 30, 1995, shall be treated as involving 1.4 days for purposes of payment adjustments with respect to this period of time. As a result, each per diem payment adjustment amount otherwise payable to the hospital in connection with these days shall be increased by 40 percent. The Medi-Cal days in question shall be treated as involving 1.4 days toward the maximum limit set forth in paragraph (2) of subdivision (*l*). The Medi-Cal days in question shall be treated as involving 1.0 days for purposes of determining the hospital's annualized Medi-Cal inpatient paid days for the next applicable payment adjustment year.

(B) For the 1994–95 payment adjustment year, no eligible hospital shall receive total payment adjustments, including per diem payment adjustment amounts and any supplemental lump-sum payment adjustment amounts, in excess of the projected total payment adjustment amounts that were computed or recomputed, as applicable, for the hospital by the department with respect to the 1994–95 payment adjustment year. For each hospital, this maximum figure shall not exceed the sum of the following two components:

(i) The final figure computed by the department as the hospital's total per diem composite amount (including any applicable adjustments under subdivision (p)), multiplied by 80 percent of the hospital's annualized Medi-Cal inpatient paid days.

(ii) The amount calculated by the department as the hospital's pro rata share (based on the figures for all hospitals computed under clause (i)) of the remainder determined by subtracting (I) the sum of the figures computed for all hospitals under clause (i) from (II) the final maximum state disproportionate share hospital allotment for California under applicable federal rules for the 1995 federal fiscal year.

(C) Any payment adjustment amount that otherwise would be payable to a hospital, but that is barred by subparagraph (B), shall be withheld or recouped by the department and distributed on a descending pro rata basis as part of the supplemental lump-sum distribution described in subdivision (w) to those hospitals that have not reached their maximum figures as described in subparagraph (B).

(2) (A) Notwithstanding any other provision of law, except for subparagraph (B), all Medi-Cal days of acute inpatient hospital

service paid by or on behalf of the department that give rise to payment adjustment amounts with respect to the period October 1, 1995, through June 30, 1996, shall be treated as involving 1.4 days for purposes of payment adjustments with respect to this period of time. As a result, each per diem payment adjustment amount otherwise payable to the hospital in connection with these days shall be increased by 40 percent. The Medi-Cal days in question shall be treated as involving 1.4 days toward the maximum limit set forth in paragraph (2) of subdivision (*l*). The Medi-Cal days in question shall be treated as involving 1.0 days for purposes of determining the hospital's annualized Medi-Cal inpatient paid days for the next applicable payment adjustment year.

(B) For the 1995–96 payment adjustment year, no eligible hospital shall receive total payment adjustments, including per diem payment adjustment amounts, supplemental lump-sum payment adjustment amounts, and secondary supplemental payment adjustments in excess of the hospital's OBRA 1993 payment limitation as computed by the department pursuant to the Medi-Cal State Plan. No hospital shall receive secondary supplemental payment adjustments to the extent the payment adjustments would be inconsistent with paragraph (9) of subdivision (y).

(C) Any payment adjustment amount that otherwise would be payable to a hospital, but that is barred by subparagraph (B), shall be withheld or recouped by the department and thereafter distributed to other eligible hospitals, refunded to transferors, or otherwise processed in accordance with this section and Section 14163.

(3) Notwithstanding any other provision of law, to the extent necessary or appropriate to implement and administer the amendments to this section enacted during the 1994 calendar year, the department may utilize an approach involving interim payments, with reconciliation to final payments within a reasonable time.

(aa) (1) For the 1996–97 payment adjustment year, each eligible hospital that remains in operation as of June 30, 1997, shall also be eligible to receive a supplemental lump-sum payment adjustment, that shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date. The availability of supplemental lump-sum payment adjustments under this paragraph shall be determined by the department as follows:

(A) The projected total payment adjustment amount for each hospital, as determined by the department at the outset of the payment adjustment year, including any reductions arising from payment limitations under this section, shall be identified. For each hospital, this amount shall be identical to the amount that was used for the same hospital in the calculations made at the outset of the 1996–97 state fiscal year regarding transfer amounts under subdivision (h) of Section 14163 for that fiscal year.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the period July 1, 1996, through June 30, 1997, shall be determined for each hospital. The applicability of the per diem payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The amount determined under subparagraph (B) for each hospital shall be subtracted from the amount identified under subparagraph (A) for each hospital. If the remainder is a positive figure for the particular hospital, the supplemental lump-sum payment adjustment for the hospital shall be the positive remainder amount, which shall be payable because the facility is a disproportionate share hospital in operation as of June 30, 1997.

(D) The department shall make interim and final payments of the supplemental lump-sum payment adjustments under this paragraph on or before September 30, 1997.

(2) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

SEC. 3. 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), 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 443.31 or 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 439.2 or 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 443.31 or 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 subparagraph (B) and 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.

(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.

(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 which 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. 4. The State Department of Health Services shall take steps as are necessary to have published on or before December 31, 1996, any public notices that are appropriate or required under federal or California law in order to ensure a federal medicaid effective date no later than January 1, 1997, for the provisions of this act. Notwithstanding any other provision of law, the State Department of Health Services may arrange for the publication of any notice through a private vendor, on a bid or nonbid basis, on an exclusive or nonexclusive basis, without review or approval by any other department, agency, or instrumentality of the state. The costs of publishing any notice through a private vendor shall be recovered by the State Department of Health Services from the Medi-Cal Inpatient Payment Adjustment Fund.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure sufficient funding for disproportionate share providers in the Medi-Cal program to enable them to provide sufficient access to Medi-Cal benefits as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1100

An act to amend Section 115080 of the Health and Safety Code, relating to radiation control.

[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) Both the State of California and the federal government through the Food and Drug Administration (FDA) have established extensive regulatory requirements for any users of mammographic X-ray equipment.

(b) Those requirements include specific licensure of equipment, technologists, physician supervision and competency, quality assurance, film review, and inspections.

(c) There is a substantial duplication of requirements and compliance costs for facilities utilizing mammography equipment due to the overlapping jurisdiction and control of both the state and federal government agencies. These facilities must pay registration fees and accreditation costs for the same or substantially similar review process.

(d) It is the intent of the Legislature that registration and license fees imposed by the state be reduced to reflect the duplicative costs paid to the FDA and private accrediting bodies to establish competency and compliance.

(e) It is the intent of the Legislature that the Department of Health Services evaluate current requirements imposed by the department and the FDA and eliminate any inconsistencies that do not enhance patient care and that impose an unreasonable regulatory burden.

SEC. 2. Section 115080 of the Health and Safety Code is amended to read:

115080. (a) The department shall provide by regulation a ranking of priority for inspection, as determined by the degree of

potentially damaging exposure of persons by ionizing radiation and the requirements of Section 115085, and a schedule of fees, based upon that priority ranking, that shall be paid by persons possessing sources of ionizing radiation that are subject to registration in accordance with subdivisions (b) and (e) of Section 115060, and regulations adopted pursuant thereto. The revenues derived from the fees shall be used, together with other funds made available therefor, for the purpose of carrying out any inspections of the sources of ionizing radiation required by this chapter or regulations adopted pursuant thereto. The fees shall, together with any other funds made available to the department, be sufficient to cover the costs of administering this chapter, and shall be set in amounts intended to cover the costs of administering this chapter for each priority source of ionizing radiation. Revenues generated by the fees shall not offset any general funds appropriated for the support of the radiologic programs authorized pursuant to this chapter, and the Radiologic Technology Act (Section 27), and Chapter 7.6 (commencing with Section 114960). Persons who pay fees shall not be required to pay, directly or indirectly, for the share of the costs of administering this chapter of those persons for whom fees are waived. The department shall take into consideration any contract payment from the Health Care Financing Administration for performance of inspections for Medicare certification and shall reduce this fee accordingly.

(b) A local agency participating in a negotiated agreement pursuant to Section 114990 shall be fully reimbursed for direct and indirect costs based upon activities governed by Section 115085. With respect to these agreements, any salaries, benefits, and other indirect costs shall not exceed comparable costs of the department. Any changes in the frequency of inspections or the level of reimbursement to local agencies made by this section or Section 115085 during the 1985–86 Regular Session shall not affect ongoing contracts.

(c) The fees paid by persons possessing sources of ionizing radiation shall be adjusted annually pursuant to Section 100425.

(d) The department shall establish two different registration fees for mammography equipment pursuant to this section based upon whether the equipment is accredited by an independent accrediting agency recognized under the federal Mammography Quality Standards Act, (42 U.S.C. 263b).

CHAPTER 1101

An act to amend Sections 1354 , 1363.05, and 1367 of, and to add Section 1366.3 to, the Civil Code, relating to common interest developments.

[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 1354 of the Civil Code is amended to read:

1354. (a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of five thousand dollars ($5,000), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure. Parties receiving a Request for Resolution shall have 30 days following service of the Request for Resolution to accept or reject alternative dispute resolution and, if not accepted within the 30-day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request for Resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

(c) At the time of filing a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages not in excess of five thousand dollars ($5,000), related to the enforcement of the governing documents, the party filing the action

shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with subdivision (b). The failure to file a certificate as required by subdivision (b) shall be grounds for a demurrer pursuant to Section 430.10 of the Code of Civil Procedure or a motion to strike pursuant to Section 435 of the Code of Civil Procedure unless the filing party certifies in writing that one of the other parties to the dispute refused alternative dispute resolution prior to the filing of the complaint, that preliminary or temporary injunctive relief is necessary, or that alternative dispute resolution is not required by subdivision (b), because the limitation period for bringing the action would have run within the 120-day period next following the filing of the action, or the court finds that dismissal of the action for failure to comply with subdivision (b) would result in substantial prejudice to one of the parties.

(d) Once a civil action specified in subdivision (a) to enforce the governing documents has been filed by either an association or an owner or member of a common interest development, upon written stipulation of the parties the matter may be referred to alternative dispute resolution and stayed. The costs of the alternative dispute resolution shall be borne by the parties. During this referral, the action shall not be subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(e) The requirements of subdivisions (b) and (c) shall not apply to the filing of a cross-complaint.

(f) In any action specified in subdivision (a) to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs. Upon motion by any party for attorney's fees and costs to be awarded to the prevailing party in these actions, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(g) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), evidence of anything said or of admissions made in the course of the alternative dispute resolution process shall not be admissible in evidence, and testimony or disclosure of such a statement or admission may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(h) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), documents prepared for the purpose or in the course of, or pursuant to, the alternative dispute resolution shall not be admissible in evidence, and disclosure of these documents may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(i) Members of the association shall annually be provided a summary of the provisions of this section, which specifically

references this section. The summary shall include the following language:

"Failure by any member of the association to comply with the prefiling requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents."

The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner specified in Section 5016 of the Corporations Code.

(j) Any Request for Resolution sent to the owner of a separate interest pursuant to subdivision (b) shall include a copy of this section.

SEC. 2. Section 1363.05 of the Civil Code is amended to read:

1363.05. (a) This section shall be known and may be cited as the Common Interest Development Open Meeting Act.

(b) Any member of the association may attend meetings of the board of directors of the association, except when the board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, or personnel matters. The board of directors of the association shall meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session.

(c) Any matter discussed in executive session shall be generally noted in the minutes of the board of directors.

(d) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the board of directors of an association, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any member of the association upon request and upon reimbursement of the association's costs for making that distribution.

(e) Members of the association shall be notified in writing at the time that the pro forma budget required in Section 1365 is distributed, or at the time of any general mailing to the entire membership of the association, of their right to have copies of the minutes of meetings of the board of directors, and how and where those minutes may be obtained.

(f) As used in this section, "meeting" includes any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session.

(g) Unless the time and place of meeting is fixed by the bylaws, or unless by bylaws provide for a longer period of notice, members shall be given notice of the time and place of a meeting as defined in subdivision (f), except for an emergency meeting, at least four days prior to the meeting. Notice may be given by posting the notice

in a prominent place or places within the common area, by mail or delivery of the notice to each unit in the development, or by newsletter or similar means of communication.

(h) An emergency meeting of the board may be called by the president of the association, or by any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by this section.

(i) The board of directors of the association shall permit any member of the association to speak at any meeting of the association or the board of directors, except for meetings of the board held in executive session. A reasonable time limit for all members of the association to speak to the board of directors or before a meeting of the association shall be established by the board of directors.

SEC. 3. Section 1366.3 is added to the Civil Code, to read:

1366.3. (a) The exception for disputes related to association assessments in subdivision (b) of Section 1354 shall not apply if, in a dispute between the owner of a separate interest and the association regarding the assessments imposed by the association, the owner of the separate interest chooses to pay in full to the association all of the charges listed in paragraphs (1) to (4), inclusive, and states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than 30 days from the recording of a notice of delinquent assessment in accordance with Section 1367; and in those instances, the association shall inform the owner that the owner may resolve the dispute through alternative dispute resolution as set forth in Section 1354, civil action, and any other procedures to resolve the dispute that may be available through the association.

(1) The amount of the assessment in dispute.

(2) Late charges.

(3) Interest.

(4) All fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including attorney's fees not to exceed four hundred twenty-five dollars ($425).

(b) The right of any owner of a separate interest to utilize alternative dispute resolution under this section may not be exercised more than two times in any single calendar year, and not more than three times within any five calendar years. Nothing within this section shall preclude any owner of a separate interest and the association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this section. The owner of a separate interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the association on the total amount paid under paragraphs (1) to (4), inclusive, of subdivision (a), if it is determined

through alternative dispute resolution that the assessment levied by the association was not correctly levied.

SEC. 4. Section 1367 of the Civil Code is amended to read:

1367. (a) A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. Before an association may place a lien upon the separate interest of an owner to collect a debt which is past due under this subdivision, the association shall notify the owner in writing by certified mail of the fee and penalty procedures of the association, provide an itemized statement of the charges owed by the owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the association, including the right of the association to the reasonable costs of collection. In addition, any payments toward such a debt shall first be applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses.

(b) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (d) the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Upon payment of the sums specified in the notice of delinquent assessment, the association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. A monetary penalty imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a

lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(c) Except as indicated in subdivision (b), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(d) A lien created pursuant to subdivision (b) shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

(e) After the expiration of 30 days following the recording of a lien created pursuant to subdivision (b), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts.

(f) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(g) This section only applies to liens recorded on or after January 1, 1986.

CHAPTER 1102

An act to amend, repeal, and add Section 13001 of the Elections Code, relating to elections.

[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 13001 of the Elections Code is amended to read:

13001. (a) Except as provided in subdivision (b), all expenses authorized and necessarily incurred in the preparation for and conduct of elections as provided in this code shall be paid from the county treasuries, except that when an election is called by the governing body of a city the expenses shall be paid from the treasury of the city. All payments shall be made in the same manner as other county or city expenditures are made. The elections official, in providing the materials required by this division, need not utilize the services of the county or city purchasing agent.

(b) On and after January 1, 1996, all expenses authorized and necessarily incurred in the preparation for and conduct of elections proclaimed by the Governor to fill a vacancy in the office of Senator or Member of the Assembly, or to fill a vacancy in the office of United States Senator or Representative in the United States House of Representatives, shall be paid by the state. If an election proclaimed by the Governor to fill a vacancy in an office specified in this subdivision is consolidated with any other local election, only those additional expenses directly related to the election proclaimed by the Governor to fill a vacancy in the office shall be paid by the state.

(c) 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. 2. Section 13001 is added to the Elections Code, to read:

13001. (a) All expenses authorized and necessarily incurred in the preparation for and conduct of elections as provided in this code shall be paid from the county treasuries, except that when an election is called by the governing body of a city the expenses shall be paid from the treasury of the city. All payments shall be made in the same manner as other county or city expenditures are made. The elections official, in providing the materials required by this division, need not utilize the services of the county or city purchasing agent.

(b) This section shall become operative on January 1, 2000.

CHAPTER 1103

An act to amend Section 3058.6 of the Penal Code, relating to parole.

[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 3058.6 of the Penal Code is amended to read:

3058.6. (a) Whenever any person confined to state prison is serving a term for the conviction of a violent felony listed in subdivision (c) of Section 667.5, the Board of Prison Terms, with

respect to inmates sentenced pursuant to subdivision (b) of Section 1168 or the Department of Corrections, with respect to inmates sentenced pursuant to Section 1170, shall notify the sheriff or chief of police, or both, and the district attorney, who has jurisdiction over the community in which the person is scheduled to be released on parole or rereleased following a period of confinement pursuant to a parole revocation without a new commitment.

(b) (1) The notification shall be made by mail at least 45 days prior to the scheduled release date, except as provided in paragraph (3). In all cases, the notification shall include the name of the person who is scheduled to be released, whether or not the person is required to register with local law enforcement, and the community in which the person will reside. The notification shall specify the office within the Department of Corrections with the authority to make final determination and adjustments regarding parole location decisions.

(2) Notwithstanding any other provision of law, the Department of Corrections shall not restore credits nor take any administrative action resulting in an inmate being placed in a greater credit earning category that would result in notification being provided less than 45 days prior to an inmate's scheduled release date.

(3) When notification cannot be provided within the 45 days due to the unanticipated release date change of an inmate as a result of an order from the court, an action by the Board of Prison Terms, the granting of an administrative appeal, or a finding of not guilty or dismissal of a disciplinary action, that affects the sentence of the inmate, or due to a modification of the department's decision regarding the community into which the person is scheduled to be released pursuant to paragraph (4), the department shall provide notification as soon as practicable, but in no case less than 24 hours after the final decision is made regarding where the parolee will be released.

(4) Those agencies receiving the notice referred to in this subdivision may provide written comment to the board or department regarding the impending release. Agencies that choose to provide written comments shall respond within 30 days prior to the inmate's scheduled release, unless an agency received less than 45 days' notice of the impending release, in which case the agency shall respond as soon as practicable prior to the scheduled release. Those comments shall be considered by the board or department which may, based on those comments, modify its decision regarding the community in which the person is scheduled to be released. The Department of Corrections shall respond in writing not less than 15 days prior to the scheduled release with a final determination as to whether to adjust the parole location and documenting the basis for its decision, unless the department received comments less than 30 days prior to the impending release, in which case the department

shall respond as soon as practicable prior to the scheduled release. The comments shall become a part of the inmate's file.

(c) If the court orders the immediate release of an inmate, the department shall notify the sheriff or chief of police, or both, and the district attorney, who has jurisdiction over the community in which the person is scheduled to be released on parole at the time of release.

(d) The notification required by this section shall be made whether or not a request has been made under Section 3058.5.

In no case shall notice required by this section to the appropriate agency be later than the day of release on parole. If, after the 45-day notice is given to law enforcement and to the district attorney relating to an out-of-county placement, there is change of county placement, notice to the ultimate county of placement shall be made upon the determination of the county of placement.

CHAPTER 1104

An act to amend Sections 6007, 6044.5, 6090.5, 6101, 6102, 6140.7, 6147, 6148, 6200, 6201, 6202, 6203, 6204, and 6204.5 of, to add Section 6085.5 to, and to repeal Section 6205 of, the Business and Professions Code, relating to attorneys.

[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 6007 of the Business and Professions Code is amended to read:

6007. (a) When a member requires involuntary treatment pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of Division 5 of, or Part 2 (commencing with Section 6250) of Division 6 of the Welfare and Institutions Code, or when under an order pursuant to Section 3051, 3106.5, or 3152 of the Welfare and Institutions Code he or she has been placed in or returned to inpatient status at the California Rehabilitation Center or its branches, or when he or she has been determined insane or mentally incompetent and is confined for treatment or placed on outpatient status pursuant to the Penal Code, or on account of his or her mental condition a guardian or conservator, for his or her estate or person or both, has been appointed, the Board of Governors or an officer of the State Bar shall enroll the member as an inactive member.

The clerk of any court making an order containing any of the determinations or adjudications referred to in the immediately preceding paragraph shall send a certified copy of that order to the State Bar at the same time that the order is entered.

The clerk of any court with which is filed a notice of certification for intensive treatment pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Division 5 of the Welfare and Institutions Code, upon receipt of the notice, shall transmit a certified copy of it to the State Bar.

The State Bar may procure a certified copy of any determination, order, adjudication, appointment, or notice when the clerk concerned has failed to transmit one or when the proceeding was had in a court other than a court of this state.

In the case of an enrollment pursuant to this subdivision, the State Bar shall terminate the enrollment when the member has had the fact of his or her restoration to capacity judicially determined, upon the member's release from inpatient status at the California Rehabilitation Center or its branches pursuant to Section 3053, 3109, or 3151 of the Welfare and Institutions Code, or upon the member's unconditional release from the medical facility pursuant to Section 5304 or 5305 of the Welfare and Institutions Code; and on payment of all fees required.

When a member is placed in, returned to, or released from inpatient status at the California Rehabilitation Center or its branches, or discharged from the narcotics treatment program, the Director of Corrections or his or her designee shall transmit to the State Bar a certified notice attesting to that fact.

(b) The board shall also enroll a member of the State Bar as an inactive member in each of the following cases:

(1) A member asserts a claim of insanity or mental incompetence in any pending action or proceeding, alleging his or her inability to understand the nature of the action or proceeding or inability to assist counsel in representation of the member.

(2) The court makes an order assuming jurisdiction over the member's law practice, pursuant to Section 6180.5 or 6190.3.

(3) After notice and opportunity to be heard before the board or a committee, the board finds that the member, because of mental infirmity or illness, or because of the habitual use of intoxicants or drugs, is (i) unable or habitually fails to perform his or her duties or undertakings competently, or (ii) unable to practice law without substantial threat of harm to the interests of his or her clients or the public. No proceeding pursuant to this paragraph shall be instituted unless the board or a committee finds, after preliminary investigation, or during the course of a disciplinary proceeding, that probable cause exists therefor. The determination of probable cause is administrative in character and no notice or hearing is required.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the enrollment upon proof that the facts found as to the member's disability no longer exist and on payment of all fees required.

(c) (1) The board may order the involuntary inactive enrollment of an attorney upon a finding that the attorney's conduct poses a

substantial threat of harm to the interests of the attorney's clients or to the public or upon a finding based on all the available evidence, including affidavits, that the attorney has not complied with Section 6002.1 and cannot be located after reasonable investigation.

(2) In order to find that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public pursuant to this subdivision, each of the following factors shall be found, based on all the available evidence, including affidavits:

(A) The attorney has caused or is causing substantial harm to the attorney's clients or the public.

(B) The attorney's clients or the public are likely to suffer greater injury from the denial of the involuntary inactive enrollment than the attorney is likely to suffer if it is granted, or there is a reasonable likelihood that the harm will reoccur or continue. Where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shall shift to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.

(C) There is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter.

(3) In the case of an enrollment under this subdivision, the underlying matter shall proceed on an expedited basis.

(4) The board shall order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default. For purposes of this section, that attorney shall be placed on involuntary inactive enrollment regardless of the membership status of the attorney at the time.

(5) The board shall formulate and adopt rules of procedure to implement this subdivision.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses a substantial threat of harm to the interests of the attorney's clients or the public or where an attorney who could not be located proves compliance with Section 6002.1.

(d) (1) The board may order the involuntary inactive enrollment of an attorney for violation of probation upon the occurrence of all of the following:

(A) The attorney is under a suspension order any portion of which has been stayed during a period of probation.

(B) The board finds that probation has been violated.

(C) The board recommends to the court that the attorney receive an actual suspension on account of the probation violation or other disciplinary matter.

(2) The board shall terminate an enrollment under this subdivision upon expiration of a period equal to the period of stayed suspension in the probation matter, or until the court makes an order

regarding the recommended actual suspension in the probation matter, whichever occurs first.

(3) If the court orders a period of actual suspension in the probation matter, any period of involuntary inactive enrollment pursuant to this subdivision shall be credited against the period of actual suspension ordered.

(e) (1) The board shall order the involuntary, inactive enrollment of a member whose default has been entered pursuant to the State Bar Rules of Procedure if both of the following conditions are met:

(A) The notice was duly served pursuant to subdivision (c) of Section 6002.1.

(B) The notice contained the following language at or near the beginning of the notice, in capital letters:

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INVOLUNTARY INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

(2) The board shall terminate the involuntary inactive enrollment of a member under this subdivision when the member's default is set aside on motion timely made under the State Bar Rules of Procedure or the disciplinary proceedings are completed.

(3) The enrollment under this subdivision is administrative in character and no hearing is required.

(4) Upon the involuntary inactive enrollment of a member under this subdivision, the notice required by subdivision (b) of Section 6092.5 shall be promptly given.

(5) The board may delegate its authority under this subdivision to the presiding referee or presiding judge of the State Bar Court or his or her designee.

(f) The pendency or determination of a proceeding or investigation provided for by this section shall not abate or terminate a disciplinary investigation or proceeding except as required by the facts and law in a particular case.

(g) No membership fees shall accrue against the member during the period he or she is enrolled as an inactive member pursuant to this section.

(h) The board may order a full range of interim remedies or final discipline short of involuntary inactive enrollment, including, but not limited to, conditions of probation following final discipline, or

directly ordered interim remedies, to restrict or supervise an attorney's practice of law, as well as proceedings under subdivision (a), (b), (c), or (d), or under Section 6102 or 6190. They may include restrictions as to scope of practice, monetary accounting procedures, review of performance by probation or other monitors appointed by the board, or such other measures as may be determined, after hearing, to protect present and future clients from likely substantial harm. These restrictions may be imposed upon a showing as provided in subdivision (c), except that where license restriction is proposed, the showing required of the State Bar under the factors described in subparagraph (B) of paragraph (2) of subdivision (c) need not be made.

SEC. 2. Section 6044.5 of the Business and Professions Code is amended to read:

6044.5. (a) When an investigation or formal proceeding concerns alleged misconduct which may subject a member to criminal prosecution for any felony, or any lesser crime committed during the course of the practice of law, or in any manner that the client of the member was a victim, or may subject the member to disciplinary charges in another jurisdiction, the State Bar shall disclose, in confidence, information not otherwise public under this chapter to the appropriate agency responsible for criminal or disciplinary enforcement or exchange that information with that agency.

(b) The Chief Trial Counsel or designee may disclose, in confidence, information not otherwise public under this chapter as follows:

(1) To government agencies responsible for enforcement of civil and criminal laws or for professional licensing of individuals.

(2) To members of the Judicial Nominees Evaluation Commission or a review committee thereof as to matters concerning nominees in any jurisdiction.

SEC. 3. Section 6085.5 is added to the Business and Professions Code, to read:

6085.5. There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

(a) Admission of culpability.

(b) Denial of culpability.

(c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used

against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based.

SEC. 4. Section 6090.5 of the Business and Professions Code is amended to read:

6090.5. (a) It is cause for suspension, disbarment, or other discipline for any member, whether as a party or as an attorney for a party, to agree or seek agreement, that:

(1) The professional misconduct or the terms of a settlement of a claim for professional misconduct shall not be reported to the disciplinary agency.

(2) The plaintiff shall withdraw a disciplinary complaint or shall not cooperate with the investigation or prosecution conducted by the disciplinary agency.

(3) The record of any civil action for professional misconduct shall be sealed from review by the disciplinary agency.

(b) This section applies to all settlements, whether made before or after the commencement of a civil action.

SEC. 5. Section 6101 of the Business and Professions Code is amended to read:

6101. (a) Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension.

In any proceeding, whether under this article or otherwise, to disbar or suspend an attorney on account of that conviction, the record of conviction shall be conclusive evidence of guilt of the crime of which he or she has been convicted.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Office of the State Bar of California of the pendency of an action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney. The notice shall identify the attorney and describe the crimes charged and the alleged facts. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is an attorney, and the clerk shall record prominently in the file that the defendant is an attorney.

(c) The clerk of the court in which an attorney is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the Office of the State Bar. Within five days of receipt, the Office of the State Bar shall transmit the record of any conviction which involves or may involve moral turpitude to the Supreme Court with such other records and information as may be appropriate to establish the Supreme Court's jurisdiction. The State Bar of California may procure and transmit the record of conviction to the Supreme Court when the clerk has not done so or when the conviction was had in a court other than a court of this state.

(d) The proceedings to disbar or suspend an attorney on account of such a conviction shall be undertaken by the Supreme Court

pursuant to the procedure provided in this section and Section 6102, upon the receipt of the certified copy of the record of conviction.

(e) A plea or verdict of guilty, an acceptance of a nolo contendere plea, or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of those sections.

SEC. 6. Section 6102 of the Business and Professions Code is amended to read:

6102. (a) Upon the receipt of the certified copy of the record of conviction, if it appears therefrom that the crime of which the attorney was convicted involved, or that there is probable cause to believe that it involved, moral turpitude or is a felony under the laws of California, the United States, or any state or territory thereof, the Supreme Court shall suspend the attorney 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 the further order of the court. Upon its own motion or upon good cause shown, the court 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 being given to maintaining the integrity of, and confidence in, the profession.

(b) For the purposes of this section, a crime is a felony under the law of California if it is declared to be so specifically or by subdivision (a) of Section 17 of the Penal Code, unless it is charged as a misdemeanor pursuant to paragraph (4) or (5) of subdivision (b) of Section 17 of the Penal Code, irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of postconviction proceedings, including proceedings resulting in punishment or probation set forth in paragraph (1) or (3) of subdivision (b) of Section 17 of the Penal Code.

(c) After the judgment of conviction of an offense specified in subdivision (a) has become final or, irrespective of any subsequent order under Section 1203.4 of the Penal Code or similar statutory provision, an order granting probation has been made suspending the imposition of sentence, the Supreme Court shall summarily disbar the attorney if the offense is a felony under the laws of California, the United States, or any state or territory thereof, and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude.

(d) For purposes of this section, a conviction under the laws of another state or territory of the United States shall be deemed a felony if:

(1) The judgment or conviction was entered as a felony irrespective of any subsequent order suspending sentence or granting probation and irrespective of whether the crime may be considered a misdemeanor as a result of postconviction proceedings.

(2) The elements of the offense for which the member was convicted would constitute a felony under the laws of the State of California at the time the offense was committed.

(e) Except as provided in subdivision (c), if after adequate notice and opportunity to be heard (which hearing shall not be had until the judgment of conviction has become final or, irrespective of any subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence), the court finds that the crime of which the attorney was convicted, or the circumstances of its commission, involved moral turpitude, it shall enter an order disbarring the attorney or suspending him or her from practice for a limited time, according to the gravity of the crime and the circumstances of the case; otherwise it shall dismiss the proceedings. In determining the extent of the discipline to be imposed in a proceeding pursuant to this article, any prior discipline imposed upon the attorney may be considered.

(f) The court may refer the proceedings or any part thereof or issue therein, including the nature or extent of discipline, to the State Bar for hearing, report, and recommendation.

(g) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.

(h) The Supreme Court shall prescribe rules for the practice and procedure in proceedings conducted pursuant to this section and Section 6101.

(i) The other provisions of this article providing a procedure for the disbarment or suspension of an attorney do not apply to proceedings pursuant to this section and Section 6101, unless expressly made applicable.

SEC. 7. Section 6140.7 of the Business and Professions Code is amended to read:

6140.7. Costs assessed against a member publicly reproved or suspended, where suspension is stayed and the member is not actually suspended, shall be added to and become a part of the membership fee of the member, for the next calendar year. Unless time for payment of discipline costs is extended pursuant to subdivision (c) of Section 6085.10, costs assessed against a member who resigns with disciplinary charges pending or by a member who is actually suspended or disbarred shall be paid as a condition of reinstatement of or return to active membership.

SEC. 8. Section 6147 of the Business and Professions Code, as amended by Section 2 of Chapter 479 of the Statutes of 1994, is amended to read:

6147. (a) An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the client, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

(1) A statement of the contingency fee rate that the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.

(3) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.

(4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.

(5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(6) If the attorney does not meet any of the following criteria, a statement disclosing that fact:

(A) Maintains errors and omissions insurance coverage.

(B) Has filed with the State Bar an executed copy of a written agreement guaranteeing payment of all claims established against the attorney by his or her clients for errors or omissions arising out of the practice of law by the attorney in the amount specified in paragraph (c) of subsection (1) of Section B of Rule IV of the Law Corporation Rules of the State Bar. The State Bar may charge a filing fee not to exceed five dollars ($5).

(C) If a law corporation, has filed with the State Bar an executed copy of the written agreement required pursuant to paragraph (a), (b), or (c) of subsection (1) of Section B of Rule IV of the Law Corporation Rules of the State Bar.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

(d) This section shall remain in effect only until January 1, 2000, and of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 9. Section 6147 of the Business and Professions Code, as amended by Section 3 of Chapter 479 of the Statutes of 1994, is amended to read:

6147. (a) An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the plaintiff, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

(1) A statement of the contingency fee rate that the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.

(3) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.

(4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.

(5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

(d) This section shall become operative on January 1, 2000.

SEC. 10. Section 6148 of the Business and Professions Code, as amended by Section 4 of Chapter 479 of the Statutes of 1994, is amended to read:

6148. (a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars ($1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following:

(1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.

(2) The general nature of the legal services to be provided to the client.

(3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(4) If the attorney does not meet any of the following criteria, a statement disclosing that fact:

(A) Maintains errors and omissions insurance coverage.

(B) Has filed with the State Bar an executed copy of a written agreement guaranteeing payment of all claims established against the attorney by his or her clients for errors or omissions arising out of the practice of law by the attorney in the amount specified in

paragraph (c) of subdivision (1) of Section B of Rule IV of the Law Corporation Rules of the State Bar. The State Bar may charge a filing a fee not to exceed five dollars ($5).

(C) If a law corporation, has filed with the State Bar an executed copy of the written agreement required pursuant to paragraph (a), (b), or (c) of subsection (1) of Section B of Rule IV of the Law Corporation Rules of the State Bar.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

(d) This section shall not apply to any of the following:

(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.

(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

(4) If the client is a corporation.

(e) This section applies prospectively only to fee agreements following its operative date.

(f) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 11. Section 6148 of the Business and Professions Code, as amended by Section 5 of Chapter 479 of the Statutes of 1994, is amended to read:

6148. (a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including

attorney fees, will exceed one thousand dollars ($1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following:

(1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.

(2) The general nature of the legal services to be provided to the client.

(3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

(d) This section shall not apply to any of the following:

(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.

(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

(4) If the client is a corporation.

(e) This section applies prospectively only to fee agreements following its operative date.

(f) This section shall become operative on January 1, 2000.

SEC. 12. Section 6200 of the Business and Professions Code is amended to read:

6200. (a) The board of governors shall, by rule, establish, maintain, and administer a system and procedure for the arbitration, and may establish, maintain, and administer a system and procedure for mediation of disputes concerning fees, costs, or both, charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. The rules may include provision for a filing fee in such amount as the board may, from time to time, determine.

(b) This article shall not apply to any of the following:

(1) Disputes where a member of the State Bar of California is also admitted to practice in another jurisdiction or where an attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.

(2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, except as provided in subdivision (a) of Section 6203.

(3) Disputes where the fee or cost to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.

(c) Unless the client has agreed in writing to arbitration under this article of all disputes concerning fees, costs, or both, arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client. Mediation under this article shall be voluntary for an attorney and a client.

(d) The board of governors shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board to insure that they provide for a fair, impartial, and speedy hearing and award.

(e) In adopting or reviewing rules of arbitration under this section the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil law, if the attorney's representation involved civil law, or criminal law, if the attorney's representation involved criminal law, as follows:

(1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, and shall include one lay member.

(2) If the panel is composed of one member, that member shall be an attorney whose area of practice is either, at the option of the client, civil or criminal law.

(f) In any arbitration or mediation conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules

of procedure approved by the board of governors, an arbitrator or mediator, as well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

(g) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:

(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

(h) Participation in mediation is a voluntary consensual process, based on direct negotiations between the attorney and his or her client, and is an extension of the negotiated settlement process. All discussions and offers of settlement are confidential and may not be disclosed in any subsequent arbitration or other proceedings.

SEC. 13. Section 6201 of the Business and Professions Code is amended to read:

6201. (a) The rules adopted by the board of governors shall provide that an attorney shall forward a written notice to the client prior to or at the time of service of summons or claim in an action against the client, or prior to or at the commencement of any other proceeding against the client under a contract between attorney and client which provides for an alternative to arbitration under this article, for recovery of fees, costs, or both. The written notice shall be in the form that the board of governors prescribes, and shall include a statement of the client's right to arbitration under this article. Failure to give this notice shall be a ground for the dismissal of the action or other proceeding. The notice shall not be required, however, prior to initiating mediation of the dispute.

The rules adopted by the board of governors shall provide that the client's failure to request arbitration within 30 days after receipt of notice from the attorney shall be deemed a waiver of the client's right to arbitration under the provisions of this article.

(b) If an attorney, or the attorney's assignee, commences an action in any court or any other proceeding and the client is entitled to maintain arbitration under this article, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action or other proceeding by serving and filing a request for arbitration in accordance with the rules established by the board of governors pursuant to subdivision (a) of Section 6200. The request for arbitration shall be served and filed prior to the filing of an answer in the action or equivalent response in the other proceeding; failure to so request arbitration prior to the filing of an answer or equivalent response shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).

(c) Upon filing and service of the request for arbitration, the action or other proceeding shall be automatically stayed until the award of the arbitrators is issued or the arbitration is otherwise terminated. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if and to the extent the court finds that the matter is not appropriate for arbitration under the provisions of this article. The action or other proceeding may thereafter proceed subject to the provisions of Section 6204.

(d) A client's right to request or maintain arbitration under the provisions of this article is waived by the client commencing an action or filing any pleading seeking either of the following:

(1) Judicial resolution of a fee dispute to which this article applies.

(2) Affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct.

(e) If the client waives the right to arbitration under this article, the parties may stipulate to set aside the waiver and to proceed with arbitration.

SEC. 14. Section 6202 of the Business and Professions Code is amended to read:

6202. The provisions of Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code shall not prohibit the disclosure of any relevant communication, nor shall the provisions of Section 2018 of the Code of Civil Procedure be construed to prohibit the disclosure of any relevant work product of the attorney in connection with: (a) an arbitration hearing or mediation pursuant to this article; (b) a trial after arbitration; or (c) judicial confirmation, correction, or vacation of an arbitration award. In no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose.

SEC. 15. Section 6203 of the Business and Professions Code is amended to read:

6203. (a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The award shall not include any award to either party for costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award or costs or attorney's fees. However, the filing fee paid may be allocated between the parties by the arbitrators. This section shall not preclude an award of costs or attorney's fees to either party by a court pursuant to subdivision (c) of this section or of subdivision (d) of Section 6204. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the award.

Evidence relating to claims of malpractice and professional misconduct, shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying any such claim. Nothing in this section shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.

(b) Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after mailing of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. If an action has previously been filed in any court, any petition to confirm, correct, or vacate the award shall be to the court in which the action is pending, and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with Section 1003) of Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award, but otherwise in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(c) Neither party to the arbitration may recover costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding with the exception of the filing fee paid pursuant to subdivision (a) of this section. However, a court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and costs on appeal. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award.

(d) (1) In any matter arbitrated under this article in which the award is binding or has become binding by operation of law or has become a judgment either after confirmation under subdivision (c) or after a trial after arbitration under Section 6204, or in any matter mediated under this article, if: (A) the award, judgment, or agreement reached after mediation includes a refund of fees or costs, or both, to the client and (B) the attorney has not complied with that award, judgment, or agreement the State Bar shall enforce the

award, judgment, or agreement by placing the attorney on involuntary inactive status until the refund has been paid.

(2) The State Bar shall provide for an administrative procedure to determine whether an award, judgment, or agreement should be enforced pursuant to this subdivision. An award, judgment, or agreement shall be so enforced if:

(A) The State Bar shows that the attorney has failed to comply with a binding fee arbitration award, judgment, or agreement rendered pursuant to this article.

(B) The attorney has not proposed a payment plan acceptable to the client or the State Bar.

However, the award, judgment, or agreement shall not be so enforced if the attorney has demonstrated that he or she (i) is not personally responsible for making or ensuring payment of the refund, or (ii) is unable to pay the refund.

(3) An attorney who has failed to comply with a binding award, judgment, or agreement shall pay administrative penalties or reasonable costs, or both, as directed by the State Bar. Penalties imposed shall not exceed 20 percent of the amount to be refunded to the client or one thousand dollars ($1,000), whichever is greater. Any penalties or costs, or both, that are not paid shall be added to the membership fee of the attorney for the next calendar year.

(4) The board shall terminate the inactive enrollment upon proof that the attorney has complied with the award, judgment, or agreement and upon payment of any costs or penalties, or both, assessed as a result of the attorney's failure to comply.

(5) A request for enforcement under this subdivision shall be made within four years from the date (A) the arbitration award was mailed, (B) the judgment was entered, or (C) the date the agreement was signed. In an arbitrated matter, however, in no event shall a request be made prior to 100 days from the date of the service of a signed copy of the award. In cases where the award is appealed, a request shall not be made prior to 100 days from the date the award has become final as set forth in this section.

SEC. 16. Section 6204 of the Business and Professions Code is amended to read:

6204. (a) The parties may agree in writing to be bound by the award of the arbitrators at any time after the dispute over fees, costs, or both, has arisen. In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c), except that if either party willfully fails to appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to a trial after arbitration. The determination of willfulness shall be made by the court. The party who failed to appear at the arbitration shall have the burden of proving that the failure to appear was not willful. In making its determination, the court may

consider any findings made by the arbitrators on the subject of a party's failure to appear.

(b) If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after mailing of notice of the award. If the rejection of arbitration award has been filed by the plaintiff in the pending action, all defendants shall file a responsive pleading within 30 days following service upon the defendant of the rejection of arbitration award and request for trial after arbitration. If the rejection of arbitration award has been filed by the defendant in the pending action, all defendants shall file a responsive pleading within 30 days after the filing of the rejection of arbitration award and request for trial after arbitration. Service may be made by mail on any party who has appeared; otherwise service shall be made in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Upon service and filing of the rejection of arbitration award, any stay entered pursuant to Section 6201 shall be vacated, without the necessity of a court order.

(c) If no action is pending, the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in controversy within 30 days after mailing of notice of the award. After the filing of such an action, the action shall proceed in accordance with the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure, concerning civil actions generally.

(d) The party seeking a trial after arbitration shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration award, and in all other cases the other party shall be the prevailing party. The prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorneys' fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. In fixing the attorneys' fees, the court shall consider the award and determinations of the arbitrators, in addition to any other relevant evidence.

(e) Except as provided in this section, the award and determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res judicata in any action or proceeding.

SEC. 17. Section 6204.5 of the Business and Professions Code is amended to read:

6204.5. (a) The State Bar shall provide by rule for an appropriate procedure to disqualify an arbitrator or mediator upon request of either party.

(b) The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver a notice to the parties advising them of their rights to judicial relief subsequent to the arbitration proceeding.

SEC. 18. Section 6205 of the Business and Professions Code is repealed.

CHAPTER 1105

An act to amend Section 5913 of, to add a heading of Article 1 (commencing with Section 5910) to, and to add Article 2 (commencing with Section 5914) to, Chapter 9 of Part 2 of Division 2 of Title 1 of, the Corporations Code, relating to public benefit corporations.

[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) Charitable, nonprofit health facilities, including nonprofit hospitals, hold all of their assets in trust, and those assets are irrevocably dedicated, as a condition of their tax-exempt status, to the specific charitable purposes set forth in the articles of incorporation of nonprofit entities.

(b) The public is the beneficiary of the trust on which charitable, nonprofit health facilities hold their assets.

(c) Charitable, nonprofit health facilities have a substantial and beneficial effect on the provision of health care to the people of California, providing as part of their charitable mission uncompensated care to uninsured low-income families and under-compensated care to the poor, elderly, and disabled.

(d) Transfers of the assets of nonprofit, charitable health facilities to the for-profit sector, such as by sale, joint venture, or other sharing of assets, directly affect the charitable use of those assets and may affect the availability of community health care services.

(e) The state Attorney General is entrusted by law to bring actions on behalf of the public in the event of a breach of the charitable trust of a nonprofit entity and to represent the public in the sale or other transfer of the assets of a nonprofit entity.

(f) It is in the best interests of the public to ensure that the public interest is fully protected whenever the assets of a charitable nonprofit health facility are transferred out of the charitable trust and to a for-profit or mutual benefit entity.

(g) The consent of the state Attorney General shall be required for any transaction involving a nonprofit, charitable health facility when a material amount of the charitable assets are transferred to a for-profit or mutual benefit entity.

SEC. 2. A heading of Article 1 (commencing with Section 5910) is added to Chapter 9 of Part 2 of Division 2 of Title 1 of the Corporations Code, to read:

Article 1. General Provisions

SEC. 3. Section 5913 of the Corporations Code is amended to read:

5913. Except for an agreement or transaction subject to Section 5914, a corporation must give written notice to the Attorney General 20 days before it sells, leases, conveys, exchanges, transfers or otherwise disposes of all or substantially all of its assets unless the transaction is in the usual and regular course of its activities or unless the Attorney General has given the corporation a written waiver of this section as to the proposed transaction.

SEC. 4. Article 2 (commencing with Section 5914) is added to Chapter 9 of Part 2 of Division 2 of the Corporations Code, to read:

Article 2. Health Facilities

5914. (a) Any nonprofit corporation that is subject to the public benefit corporation law and is a health facility, as defined in Section 1250 of the Health and Safety Code, or is a facility that provides similar health care, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:

(1) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity when a material amount of the assets of the public benefit corporation are involved in the agreement or transaction.

(2) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit public benefit corporation to any for-profit corporation or entity or to any mutual benefit corporation or entity.

(b) The notice to the Attorney General provided for in this section shall include and contain the information the Attorney General determines is required.

(c) This article shall not apply to a public benefit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a written waiver of this article as to the proposed agreement or transaction.

5915. Within 60 days of the receipt of the written notice required by Section 5914, the Attorney General shall notify the public benefit corporation in writing of the decision to consent to, give conditional consent to, or not consent to the agreement or transaction. The

Attorney General may extend this period for one additional 45-day period, provided the extension is necessary to obtain information pursuant to subdivision (a) of Section 5919.

5916. Prior to issuing any written decision referred to in Section 5915, the Attorney General shall conduct one or more public meetings, one of which shall be in the county in which the facility is located, to hear comments from interested parties. At least 14 days before conducting the public meeting, the Attorney General shall provide written notice of the time and place of the meeting through publication in one or more newspapers of general circulation in the affected community and to the board of supervisors of the county in which the facility is located.

5917. The Attorney General shall have discretion to consent to, give conditional consent to, or not consent to any such agreement or transaction described in subdivision (a) of Section 5914. In making the determination, the Attorney General shall consider any factors that the Attorney General deems relevant, including, but not limited to, whether any of the following apply:

(a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit public benefit corporation.

(b) The agreement or transaction will result in inurement to any private person or entity.

(c) Any agreement or transaction that is subject to this article is at fair market value. In this regard, "fair market value" means the most likely price that the assets being sold would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and in their own best interest, and a reasonable time being allowed for exposure in the open market.

(d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease.

(e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.

(f) The agreement or transaction involves or constitutes any breach of trust.

(g) The Attorney General has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit public benefit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public.

(h) The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.

(i) The proposed agreement or transaction is in the public interest.

5918. The Attorney General may adopt regulations implementing this article.

5919. (a) Within the time periods designated in Section 5915 and relating to those factors specified in Section 5917, the Attorney General may do the following:

(1) Contract with, consult, and receive advice from any state agency on those terms and conditions that the Attorney General deems appropriate.

(2) In his or her sole discretion, contract with experts or consultants to assist in reviewing the proposed agreement or transaction.

(b) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The nonprofit public benefit corporation, upon request, shall pay the Attorney General promptly for all contract costs.

(c) The Attorney General shall be entitled to reimbursement from the nonprofit public benefit corporation for all actual, reasonable, direct costs incurred in reviewing, evaluating, and making the determination referred to in this article, including administrative costs. The nonprofit public benefit corporation shall promptly pay the Attorney General, upon request, for all such costs.

CHAPTER 1106

An act to add Chapter 5.5 (commencing with Section 10509.950) to Part 2 of Division 2 of, and to add and repeal Chapter 5.6 (commencing with Section 10509.970) of Part 2 of Division 2 of, the Insurance Code, relating to insurance.

[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 5.5 (commencing with Section 10509.950) is added to Part 2 of Division 2 of the Insurance Code, to read:

CHAPTER 5.5. LIFE INSURANCE POLICY ILLUSTRATIONS

10509.950. In order to protect consumers and foster consumer education, this chapter shall govern the regulation of life insurance policy illustrations. It is the intent of the Legislature in enacting this chapter to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable by providing illustration formats, prescribing standards to be followed when illustrations are used, and specifying the disclosures that are

required in connection with illustrations. Insurers should, as far as possible, eliminate the use of footnotes and caveats and define terms used in the illustration in language that is understandable by a typical person within the segment of the public to which the illustration is directed.

10509.952. This chapter shall apply to all group and individual life insurance policies and certificates except as follows:

(a) Variable life insurance.

(b) Individual and group annuity contracts.

(c) Credit life insurance.

(d) Life insurance policies with no illustrated death benefits on any individual exceeding ten thousand dollars ($10,000).

10509.953. As used in this chapter:

(a) "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(b) "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

(c) "Currently payable scale" means a scale of nonguaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next 95 days.

(d) "Disciplined current scale" means a scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards meet all of the following:

(1) Have not been found to be inconsistent with the provisions of this chapter by the commissioner after a hearing held in accordance with Sections 11500 to 11530, inclusive, of the Government Code.

(2) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred.

(3) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date.

(4) Do not permit assumed expenses to be less than minimum assumed expenses.

(e) "Generic name" means a short title descriptive of the policy being illustrated such as whole life, "term life" or "flexible premium adjustable life."

(f) "Guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue.

(g) "Illustrated scale" means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of either of the following:

(1) The disciplined current scale.

(2) The currently payable scale.

(h) "Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years and that is one of the three types defined below:

(1) "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements.

(2) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this regulation, and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration.

(3) "In force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

(i) "Illustration actuary" means an actuary meeting the requirements of Section 10509.960 who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board.

(j) "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting as defined in this chapter, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and 100 percent policy persistency thereafter.

(k) "Life insurance" means insurance upon the lives of persons or appertaining thereto.

(*l*) (1) "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from all of the following:

(A) Fully allocated expenses.

(B) Marginal expenses.

(C) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.

(2) Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

(m) "Non-guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue.

(n) "Non-term group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group that includes all of the following:

(1) Every plan of coverage was selected by the employer or other group representative.

(2) Some portion of the premium is paid by the group or through payroll deduction.

(3) Group underwriting or simplified underwriting is used.

(o) "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.

(p) "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

(q) "Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the 15th policy anniversary or the 20th policy anniversary for second-or-later-to-die policies (or upon policy expiration if sooner), the accumulated value of all policy cash-flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner's election.

10509.954. (a) Each insurer marketing policies to which this chapter is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on the effective date of this chapter, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this chapter, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

(b) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

(c) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this chapter is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(d) Potential enrollees of nonterm group life subject to this chapter shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and

policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this chapter, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for nonterm group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any nonterm group life enrollee who requests it.

10509.955. (a) An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this chapter, be clearly labeled "life insurance illustration," and include, but not be limited to, the following information:

(1) Name of insurer.

(2) Name and business address of producer or insurer's authorized representative, if any.

(3) Name, age and sex of proposed insured, except where a composite illustration is permitted under this chapter.

(4) Underwriting or rating classification upon which the illustration is based.

(5) Generic name of the policy, the company product name, if different, and form number.

(6) Initial death benefit.

(7) Dividend option election or application of nonguaranteed elements, if applicable.

(b) When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized representatives shall not do any of the following:

(1) Represent the policy as anything other than a life insurance policy.

(2) Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead.

(3) State or imply that the payment or amount of nonguaranteed elements is guaranteed.

(4) Use an illustration that does not comply with the requirements of this chapter.

(5) Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated.

(6) Provide an applicant with an incomplete illustration.

(7) Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact.

(8) Use the term "vanishing" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums.

(9) Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported."

(10) Use an illustration that is not "self-supporting."

(c) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

10509.956. (a) A basic illustration shall conform with the following requirements:

(1) The illustration shall be labeled with the date on which it was prepared.

(2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration.

(3) The assumed dates of payment receipt and benefit payout within a policy year shall be clearly identified.

(4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.

(5) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premiums outlay.

(6) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

(7) If the illustration shows any nonguaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed.

(8) The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements.

(9) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

(10) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans, and policy loan interest, as applicable.

(11) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

(12) Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

(A) The benefits and values are not guaranteed.

(B) The assumptions on which they are based are subject to change by the insurer.

(C) Actual results may be more or less favorable.

(13) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration shall clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

(14) If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

(b) A basic illustration shall include all of the following:

(1) A brief description of the policy being illustrated, including a statement that it is a life insurance policy.

(2) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code.

(3) A brief description of any policy features, riders or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy.

(4) Identification and a brief definition of column headings and key terms used in the illustration.

(5) A statement as follows: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(c) (1) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years 5, 10, and 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years 5, 10, 20, and 30.

(A) Policy guarantees.

(B) Insurer's illustrated scale.

(C) Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:

(i) Dividends at 50 percent of the dividends contained in the illustrated scale used.

(ii) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(iii) All nonguaranteed charges, including but not limited to, term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(2) In addition, if coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three bases.

(d) Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this chapter.

(1) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."

(2) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(e) (1) A basic illustration shall include the following information for at least each policy year from 1 to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(A) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable.

(B) The corresponding guaranteed death benefit, as provided in the policy.

(C) The corresponding guaranteed value available upon surrender, as provided in the policy.

(2) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(3) Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any nonguaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no

guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

10509.957. (a) A supplemental illustration may be provided if it meets all of the following requirements:

(1) It is appended to, accompanied by, or preceded by a basic illustration that complies with this chapter.

(2) The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration.

(3) It contains the same statement as required of a basic illustration under subdivision (d) of Section 10509.956 that nonguaranteed elements are not guaranteed.

(4) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(b) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

(c) If cost indices are required by Chapter 5.6 (commencing with Section 10509.970), they may be provided by means of a supplemental illustration or included in the basic illustration. Those indices shall be based on nonguaranteed elements calculated according to the standards required in this chapter.

10509.958. (a) (1) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this chapter, shall be submitted to the insurer at the time of the policy application. A copy also shall be provided to the applicant.

(2) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this chapter, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policy owner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(b) (1) If no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that

an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(2) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(c) If the basic illustration or revised illustration is sent by the insurer to the applicant or policy owner by mail, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subdivision shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

(d) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

10509.959. (a) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall include, but not be limited to, the following information:

(1) For universal life policies, the report shall include the following:

(A) The beginning and end date of the current report period.

(B) The policy value at the end of the previous report period and at the end of the current report period.

(C) The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, including, but not limited to, interest, mortality, expense and riders.

(D) The current death benefit at the end of the current report period on each life covered by the policy.

(E) The net cash surrender value of the policy as of the end of the current report period.

(F) The amount of outstanding loans, if any, as of the end of the current report period.

(G) For fixed premium policies:

If, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force

until the end of the next reporting period, a notice to this effect shall be included in the report.

(H) For flexible premium policies:

If, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(2) For all other policies, the report shall include the following, where applicable:

(A) Current death benefit.

(B) Annual contract premium.

(C) Current cash surrender value.

(D) Current dividend.

(E) Application of current dividend.

(F) Amount of outstanding loan.

(3) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

(b) If the annual report does not include an in force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's address] or contacting your agent. If you do not receive a current illustration of your policy within thirty days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.

(c) Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of subdivisions (a) and (b) of Section 10509.955 and subdivisions (a) and (e) of Section 10509.956. No signature or other acknowledgment of receipt of this illustration shall be required.

(d) If an adverse change in nonguaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.

10509.960. (a) The board of directors of each insurer shall appoint one or more illustration actuaries.

(b) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial

Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this chapter.

(c) The illustration actuary shall comply with all of the following:

(1) Be a member in good standing of the American Academy of Actuaries.

(2) Be familiar with the standard of practice regarding life insurance policy illustrations.

(3) Not been found by the commissioner, following appropriate notice and hearing, to have engaged in or committed any of the following acts:

(A) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary.

(B) Been found guilty of fraudulent or dishonest practices.

(C) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary.

(D) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards.

(4) Notify the commissioner of any acts engaged in or committed in another state that are similar to those described in paragraph (3).

(5) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. Nonguaranteed elements illustrated for new policies that are not consistent with those illustrated for similar in force policies shall be disclosed in the annual certification. Nonguaranteed elements illustrated for both new and in force policies that are not consistent with the nonguaranteed elements actually being paid, charged or credited to the same or similar forms shall be disclosed in the annual certification.

(6) Disclose in the annual certification the method used to allocate overhead expenses for all illustrations including:

(A) Fully allocated expenses.

(B) Marginal expenses.

(C) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.

(d) (1) The illustration actuary shall file a certification with the board of directors of the insurer and with the commissioner as follows:

(A) Annually for all policy forms for which illustrations are used.

(B) Before a new policy form is illustrated.

(2) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

(e) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of his or her inability to certify.

(f) A responsible officer of the insurer, other than the illustration actuary, shall certify annually the following:

(1) The illustration formats meet the requirements of this chapter and the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary.

(2) The company provided its agents with information about the expense allocation method used by the company in its illustrations and complied with the disclosure requirements of paragraph (6) of subdivision (c).

(g) The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

(h) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change.

10509.961. In addition to any other penalties provided by law, an insurer or producer that violates any provision of this chapter shall be subject to Section 790.06.

10509.962. The provisions of this chapter are severable. If any provision of this chapter 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.

10509.963. If the commissioner has reason to believe that any insurer has violated this chapter, the commissioner may request and the insurer shall file: (1) an example of the annual report to the policy owner with notice of adverse change in nonguaranteed elements, and (2) an example of an illustration.

10509.964. Review by the commissioner of illustrations, supporting materials, certifications, and any and all other materials prepared pursuant to this chapter shall be subject to Section 736.

10509.965. This chapter shall become effective on and after July 1, 1997, and shall apply to policies sold on or after that date.

SEC. 2. Chapter 5.6 (commencing with Section 10509.970) is added to Part 2 of Division 2 of the Insurance Code, to read:

CHAPTER 5.6. LIFE INSURANCE COST INDEXES

10509.970. It is the purpose of this chapter to assure prospective purchasers of life insurance that, when a presentation is made showing or comparing the cost of life insurance over a period of years

which does not recognize the time value of money, it shall be accompanied by a presentation which recognizes the time value of money.

10509.971. (a) If, in connection with the selling of life insurance to which this chapter applies, an agent or insurer makes a presentation showing or comparing the cost of life insurance over a period of years which does not recognize the time value of money, the agent or insurer shall at the same time present the Life Insurance Surrender Cost Index and the Life Insurance Net Payment Cost Index which shall be calculated for both a 10-year and a 20-year period.

(b) An agent or insurer may use any other system or form of presentation for comparing the cost of life insurance over a period of years which recognizes the time value of money, including the Life Insurance Surrender Cost Index and the Life Insurance Net Payment Cost Index computed at an interest rate other than 5 percent.

(c) If the Life Insurance Surrender Cost Index or the Life Insurance Net Payment Cost Index is used, it need not be provided for a period which extends beyond the end of the premium payment period for the plan. The Life Insurance Surrender Cost Index and the Life Insurance Net Payment Cost Index shall be accompanied by an explanation substantially to the effect that the Life Insurance Surrender Cost Index and the Life Insurance Net Payment Cost Index are measures of the relative cost of similar plans of insurance, and that a low index number represents a lower cost than a higher index number.

10509.972. (a) The Life Insurance Surrender Cost Index for level premium plans of insurance shall be calculated by applying the steps in the following paragraphs:

(1) Select either a 10-year or a 20-year period, commencing with the first year of the policy, over which the analysis is to be made.

(2) Determine the cash surrender value, and terminal dividend, if any, available at the end of the period selected.

(3) For participating policies, accumulate the annual cash dividends at 5 percent interest compounded annually to the end of the period selected and add this accumulation to the amount in paragraph (2).

(4) Divide the amount in paragraph (3), or the amount in paragraph (2) for nonparticipating policies, by an interest factor that converts it into a level annual amount accruing over the period selected in paragraph (1). If the period is 10 years, this factor is 13.207, and if the period is 20 years, the factor is 34.719.

(5) Subtract the amount in paragraph (4) from the annual premium payable.

(6) Divide the amount in paragraph (5) by the number of thousands of the amount of insurance to arrive at the Life Insurance Surrender Cost Index.

(b) The Life Insurance Surrender Cost Index for plans of insurance with premiums which are not level shall be calculated as follows:

(1) Select either a 10-year or a 20-year period, commencing with the first year of the policy, over which the analysis is to be made.

(2) Determine the cash surrender value, and terminal dividend, if any, available at the end of the period selected.

(3) For participating policies, accumulate the annual cash dividends at 5 percent interest compounded annually to the end of the period selected and add this accumulation to the amount in paragraph (2).

(4) Divide the amount in paragraph (3), or the amount in paragraph (2) for nonparticipating policies, by an interest factor that converts it into a level annual amount accruing over the period selected in paragraph (1). If the period is 10 years, this factor is 13.207, and if the period is 20 years, the factor is 34.719.

(5) Subtract the amount in paragraph (4) from the equivalent level premium determined by accumulating the annual premium payable at 5 percent interest compounded annually to the end of the period in paragraph (1) and dividing the result by the factor stated in paragraph (4).

(6) Divide the amount in paragraph (5) by the number of thousands of the amount of insurance to arrive at the Life Insurance Surrender Cost Index.

(c) For plans of insurance where the amount of insurance is not level, the amount of insurance in paragraph (6) of subdivision (a) and paragraph (6) of subdivision (b) shall be calculated as follows:

(1) Accumulate the amount payable upon death, regardless of the cause of death, at the beginning of each policy year at 5 percent interest compounded annually to the end of the period selected in paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b).

(2) Divide the amount in paragraph (1) by an interest factor that converts it into a level amount of insurance that, if paid at the beginning of each year, would accrue to the amount of paragraph (1) over the period selected in paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b). If this period is 10 years, this factor is 13.207, and if the period is 20 years, the factor is 34.719.

(d) The Life Insurance Net Payment Cost Index is calculated in the same manner as the comparable Life Insurance Surrender Cost Index except that the cash surrender value and any terminal dividend are set at zero.

10509.973. Any comparison must be used with caution and should not be emphasized to the point that actual premiums and policy benefits are overshadowed. Only similar plans of insurance should be compared. Any dividend or nonguaranteed element used in calculating the Life Insurance Surrender Cost Index or the Life Insurance Net Payment Cost Index shall be based on nonguaranteed elements calculated according to the standards required in Chapter

5.5 (commencing with Section 10509.950). With respect to participating policies, care must be taken to describe the policy dividend as a refund or return of part of the premium paid, which is not guaranteed and which is dependent on the investment earnings, mortality experience, and expense experience of the insurer.

10509.974. (a) Except as provided in paragraph (b) of this section, this chapter shall apply to any solicitation, negotiation, or procurement of life insurance occurring within this state.

(b) This chapter shall not apply to:

(1) Annuities.

(2) Credit life insurance.

(3) Franchise life insurance.

(4) Group or blanket life insurance.

(5) Term life insurance.

(6) Variable life insurance, under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

(7) Benefits which are supplemental to basic life insurance benefits, such as accidental death and dismemberment, waiver of premium or guaranteed insurability benefits if the cost of any of these benefits are included in the price of the basic life insurance without separate identifiable charge. Then, in calculating the Life Insurance Surrender Cost Index and the Life Insurance Net Payment Cost Index, a reasonable adjustment in the annual premium payable on a per one thousand dollars ($1,000) basis may be made.

(8) Benefits purchased by a special option applicable to dividends.

(9) Life insurance policies where the face amount of insurance is five thousand dollars ($5,000) or less.

(10) Life insurance on substandard risks.

(11) Life insurance policies issued in connection with split funded pension trust plans.

10509.975. (a) A life insurer shall provide to all prospective insureds a buyer's guide prior to accepting the applicant's initial premium or premium deposit; provided, however, that if the policy for which application is made contains an unconditional refund provision of a least 10 days, the buyer's guide shall be delivered with the policy or prior to delivery of the policy.

(b) For the purposes of this chapter, a buyer's guide is a document that contains, and is limited to, the current buyer's guide recommended for use by the National Association of Insurance Commissioners.

10509.976. This chapter 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. 3. It is the intent of the Legislature that Chapter 5.6 (commencing with Section 10509.970) as added to Part 2 of Division 2 of the Insurance Code by Section 2 of this act, shall supersede and render inoperative, as of January 1, 1997, the provisions of Article 12.6

(commencing with Section 2546) of Subchapter 2 of Chapter 5 of Title 10 of the California Code of Regulations.

CHAPTER 1107

An act to amend Sections 7500, 7501, 7503, 7505, 7512.5, 7513, 7515, 7518, 7520, 7521, and 7522 of the Penal Code, relating to correctional institutions.

[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 7500 of the Penal Code is amended to read:

7500. The Legislature finds and declares all of the following:

(a) The public peace, health, and safety is endangered by the spread of the human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) within state and local correctional institutions.

(b) The spread of AIDS within prison and jail populations presents a grave danger to inmates within those populations, law enforcement personnel, and other persons in contact with a prisoner infected with the AIDS virus, both during and after the prisoner's confinement. Law enforcement personnel and prisoners are particularly vulnerable to this danger, due to the high number of assaults and other violent acts which occur within correctional institutions.

(c) AIDS has the frightening potential of spreading more rapidly within the closed society of correctional institutions than outside these institutions. This major public health problem is compounded by the further potential of rapid spread of communicable disease outside correctional institutions, through contacts of an infected prisoner who is not treated and monitored upon his or her release.

(d) New diseases of epidemic proportions, such as AIDS may suddenly and tragically infect large numbers of people. This title primarily addresses a current problem of this nature, the spread of AIDS among those in correctional institutions and among the people of California.

(e) HIV and AIDS pose a major threat to the public health and safety of those governmental employees and others whose responsibilities bring them into most direct contact with persons afflicted with those illnesses, and the protection of the health and safety of these personnel is of equal importance to the people of the State of California as is the protection of the health of those afflicted with the diseases who are held in custodial situations.

(f) Testing described in this title of individuals housed within state and local correctional facilities for evidence of infection by HIV or

AIDS would help provide a level of information necessary for effective disease control within these institutions and would help preserve the health of public employees, inmates, and persons in custody, as well as that of the public at large. This testing is not intended to be, and shall not be construed as, a prototypical method of disease control for the public at large.

SEC. 2. Section 7501 of the Penal Code is amended to read:

7501. In order to address the public health crisis described in Section 7500, it is the intent of the Legislature to do all of the following:

(a) Establish a procedure through which custodial and law enforcement personnel are required to report certain situations and may request and be granted a confidential HIV test of an inmate convicted of a crime, or a person arrested or taken into custody, if the custodial or law enforcement officer has reason to believe he or she has come into contact with the blood or semen of an inmate or in any other manner has come into contact with the inmate in a way that could result in HIV infection, based on the latest determinations and conclusions by the federal Centers for Disease Control and the State Department of Health Services on means for the transmission of AIDS, and if appropriate medical authorities, as provided for in this title, reasonably believe there is good medical reason for the test.

(b) Permit inmates to file similar requests stemming from contacts with other inmates.

(c) Require that probation and parole officers be notified when an inmate being released from incarceration is infected with AIDS, and permit these officers to notify certain persons who will come into contact with the parolee or probationer, if authorized by law.

(d) Authorize prison medical staff authorities to require tests of a jail or prison inmate under certain circumstances, if they reasonably believe, based upon the existence of supporting evidence, that the inmate may be suffering from HIV infection or AIDS and is a danger to other inmates or staff.

(e) Require supervisory and medical personnel of correctional institutions to which this title applies to notify staff if they are coming into close and direct contact with persons in custody who have tested positive or who have AIDS, and provide appropriate counseling and safety equipment.

SEC. 3. Section 7503 of the Penal Code is amended to read:

7503. The Department of Corrections, the Department of the Youth Authority, and county health officers shall adopt guidelines permitting a chief medical officer to delegate his or her medical responsibilities under this title to other qualified physicians and surgeons, and his or her nonmedical responsibilities to other qualified persons, as appropriate. The chief medical officer shall not, however, delegate the duty to determine whether mandatory testing is required as provided for in Chapter 2 (commencing with Section 7510).

SEC. 4. Section 7505 of the Penal Code is amended to read:

7505. This title is intended to provide the authority for state and local correctional, custodial, and law enforcement agencies to perform medical testing of inmates and prisoners for the purposes specified herein. However, notwithstanding any other provision of this title, this title shall serve as authority for the HIV testing of prisoners in only those local facilities where the governing body has adopted a resolution affirming that it shall be operative in that city, county, or city and county. Testing within state correctional facilities under the jurisdiction of the Department of Corrections and state juvenile facilities under the jurisdiction of the Department of the Youth Authority shall not be affected by this requirement.

SEC. 5. Section 7512.5 of the Penal Code is amended to read:

7512.5. In the absence of the filing of a report pursuant to Section 7510 or a request pursuant to Section 7512, the chief medical officer, may order a test of an inmate if he or she concludes there are clinical symptoms of HIV infection or AIDS , as recognized by the Centers for Disease Control and Prevention.

A copy of the decision shall be provided to the inmate, and where the inmate is a minor, to the parents or guardian of the minor, unless the parent or guardian of the minor cannot be located. Any decision made pursuant to this section shall not be appealable to a three-member panel provided for under Section 7515.

SEC. 6. Section 7513 of the Penal Code is amended to read:

7513. An inmate who is the subject of an HIV test report filed pursuant to Section 7510 or an HIV test report filed pursuant to Section 7512 shall receive, in conjunction with the decision of the chief medical officer to order a test, a copy of this title, a written description of the right to appeal the chief medical officer's decision which includes the applicable timelines, and notification of his or her right to receive pretest and posttest counseling by staff that have been certified as HIV test counselors.

SEC. 7. Section 7515 of the Penal Code is amended to read:

7515. (a) A decision of the chief medical officer made pursuant to Section 7511, 7512, or 7516 may be appealed, within three calendar days of receipt of the decision, to a three-person panel, either by the person required to be tested, or his or her parent or guardian when the subject is a minor, the law enforcement employee filing a report pursuant to either Section 7510 or 7516, or the person requesting testing pursuant to Section 7512, whichever is applicable, or the chief medical officer, upon his or her own motion. If no request for appeal is filed under this subdivision, the chief medical officer's decision shall be final.

(b) Depending upon which entity has jurisdiction over the person requesting or appealing a test, the Department of Corrections, the Department of the Youth Authority, the county, the city, or the county and city shall convene the appeal panel and shall ensure that

the appeal is heard within 30 calendar days from the date an appeal request is filed pursuant to subdivision (a).

(c) A panel required pursuant to subdivision (a) shall consist of three members, as follows:

(1) The chief medical officer making the original decision.

(2) A physician and surgeon who has knowledge in the diagnosis, treatment, and transmission of HIV selected by the Department of Corrections, Department of the Youth Authority, county, city, or county and city. The physician and surgeon appointed pursuant to this paragraph shall preside at the hearing and serve as chairperson.

(3) A physician and surgeon not on the staff of, or under contract with, a state, county, city, or county and city correctional institution or with an employer of a law enforcement employee as defined in subdivision (b) of Section 7502, and who has knowledge of the diagnosis, treatment, and transmission of HIV. The physician and surgeon appointed pursuant to this paragraph shall be selected by the State Department of Health Services from among a list of persons to be compiled by that department. The State Department of Health Services shall adopt standards for selecting persons for the list required by this paragraph, as well as for their reimbursement, and shall, to the extent possible, utilize its normal process for selecting consultants in compiling this list.

The Legislature finds and declares that the presence of a physician and surgeon on the panel who is selected by the State Department of Health Services enhances the objectivity of the panel and it is the intent of the Legislature that the State Department of Health Services make every attempt to comply with this subdivision.

(d) The Department of Corrections, county, city, or county and city shall notify the Office of AIDS in the State Department of Health Services when a panel must be convened under subdivision (a). Within 10 calendar days of the notification, a physician and surgeon appointed under paragraph (3) of subdivision (c) shall reach agreement with the Department of Corrections, the county, the city, or the county and city on a date for the hearing that complies with subdivision (b).

(e) If the Office of AIDS in the State Department of Health Services fails to comply with subdivision (d) or the physician and surgeon appointed under paragraph (3) of subdivision (c) fails to attend the scheduled hearing, the Department of Corrections, county, city, or county and city shall appoint a physician or surgeon who has knowledge of the diagnosis, treatment, and transmission of HIV to serve on the appeals panel to replace the physician and surgeon required under paragraph (3) of subdivision (c). The Department of Corrections, county, city, or county and city shall have standards for selecting persons under this subdivision and for their reimbursement.

The Department of Corrections, the Department of the Youth Authority, the county, the city, or the county and city shall, whenever

feasible, create, and utilize ongoing panels to hear appeals under this section. The membership of the panel shall meet the requirements of paragraphs (1), (2), and (3) of subdivision (c).

No panel shall be created pursuant to this paragraph by a county, city, or county and city correctional institution except with the prior approval of the local health officer.

(f) A hearing conducted pursuant to this section shall be closed, except that each of the following persons shall have the right to attend the hearing, speak on the issues presented at the hearing, and call witnesses to testify at the hearing:

(1) The chief medical officer, who may also bring staff essential to the hearing, as well as the other two members of the panel.

(2) The subject of the chief medical officer's decision, except that a subject who is a minor may attend only with the consent of his or her parent or guardian, and if the subject is a minor, his or her parent or guardian.

(3) The law enforcement employee filing the report pursuant to Section 7510, or the person requesting HIV testing pursuant to Section 7512, whichever is applicable, and if the person is a minor, his or her parent or guardian.

(g) The subject of the test, or the person requesting the test pursuant to Section 7512, or who filed the report pursuant to Section 7510, whichever is applicable, may appoint a representative to attend the hearing in order to assist him or her.

(h) When a hearing is sought pursuant to this section, the decision shall be rendered within 10 days of the date upon which the appeal is filed pursuant to subdivision (a). A unanimous vote of all the panel shall be necessary in order to require that the subject of the hearing undergo HIV testing.

The criteria specified in Section 7511 for use by the chief medical officer shall also be utilized by the panel in making its decision.

The decision shall be in writing, stating reasons for the decision, and shall be signed by the members. A copy shall be provided by the chief medical officer to the person requesting the test, or filing the report, whichever is applicable, to the subject of the test, and, when the subject is in a correctional institution, to the superintendent of the institution, except that when the subject of the test or the person upon whose behalf the request for the test was made is a minor, copies shall also be provided to the parent or guardian of the person, unless the parent or guardian cannot be located.

SEC. 8. Section 7518 of the Penal Code is amended to read:

7518. (a) The Department of Corrections, the Department of the Youth Authority, and local health officers shall adopt guidelines for the making of decisions pursuant to this chapter in consultation with the Office of AIDS in the State Department of Health Services. The guidelines shall be based on the latest written guidelines of HIV transmission and infection established by the federal Centers for Disease Control and Prevention.

(b) Oversight responsibility for implementation of the applicable provisions of this title, including the oversight of reports involving parole officers and the staff of state prisons shall be vested with the Chief of Medical Services in the Department of Corrections. Oversight responsibility for implementation of Section 7515 in the facilities of the Department of the Youth Authority shall be vested with the Chief of Medical Services in the Department of the Youth Authority. Oversight responsibility for implementation of Section 7515 with respect to reports involving parole or probation officers shall be vested with the Chief of Parole and Community Services Division in the Department of Corrections.

Oversight responsibility at the county, the city, or the county and city level shall rest with the local health officer.

SEC. 9. Section 7520 of the Penal Code is amended to read:

7520. Upon the release of an inmate from a correctional institution, a medical representative of the institution shall notify the inmate's parole or probation officer, where it is the case, that the inmate has tested positive for infection with HIV, or has been diagnosed as having AIDS. The representative of the correctional institution shall obtain the latest available medical information concerning any precautions which should be taken under the circumstances, and shall convey that information to the parole or probation officer.

When a parole or probation officer learns from responsible medical authorities that a parolee or probationer under his or her jurisdiction has AIDS or has tested positive for HIV infection, the parole or probation officer shall be responsible for ensuring that the parolee or probationer contacts the county health department in order to be, or through his or her own physician and surgeon is, made aware of counseling and treatment for AIDS commensurate with that available to the general population of that county.

SEC. 10. Section 7521 of the Penal Code is amended to read:

7521. (a) When a parole or probation officer learns from responsible medical authorities that a parolee or probationer in his or her custody has any of the conditions listed in Section 7520, but that the parolee or probationer has not properly informed his or her spouse, the officer may ensure that this information is relayed to the spouse only through either the chief medical officer of the institution from which the person was released or the physician and surgeon treating the spouse or the parolee or probationer. The parole or probation officer shall seek to ensure that proper counseling accompanies release of this information to the spouse, through the person providing the information to the inmate's spouse.

(b) If a parole or probation officer has received information from appropriate medical authorities that one of his or her parolees or probationers is HIV infected or has AIDS, and the parolee or probationer has a record of assault on a peace officer, and the officer seeks the aid of local law enforcement officers to apprehend or take

into custody the parolee or probationer, he or she shall inform the officers assisting him or her in apprehending or taking into custody the parolee or probationer, of the person's condition, to aid them in protecting themselves from contracting AIDS.

(c) Local law enforcement officers receiving information pursuant to this subdivision shall maintain confidentiality of information received pursuant to subdivision (b). Willful use or disclosure of this information is a misdemeanor. Parole or probation officers who willfully or negligently disclose information about AIDS infection, other than as prescribed under this title or any other provision of law, shall also be guilty of a misdemeanor.

SEC. 11. Section 7522 of the Penal Code is amended to read:

7522. (a) Supervisory and medical personnel in correctional institutions shall notify all law enforcement employees when those employees have had direct contact with the bodily fluids of, inmates or persons charged or in custody who either have tested positive for infection with HIV, or been diagnosed as having AIDS.

(b) Supervisory and medical personnel at correctional institutions shall provide to employees covered by this section the latest medical information regarding precautions to be taken under the circumstances, and shall furnish proper protective clothing and other necessary protective devices or equipment, and instruct staff on the applicability of this title.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed 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 1108

An act to amend Section 832.5 of the Penal Code, relating to peace officers.

[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 832.5 of the Penal Code is amended to read:

832.5. (a) Each department or agency in this state that employs peace officers shall establish a procedure to investigate citizens' complaints against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years.

(c) Complaints by members of the public that are determined by the peace officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(d) "General personnel file," for purposes of this section, means the file maintained by the agency containing the primary records specific to each officer's employment, including evaluations, assignments, status changes, and imposed discipline.

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 1109

An act relating to vehicles.

[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 that reforms need to be enacted to prevent insurance fraud, enhance vehicle safety, make it more affordable for all Californians to purchase

required vehicle insurance coverage, and reduce the number of litigated vehicle accident claims.

CHAPTER 1110

An act to amend Sections 19418, 19606.1, 19614, 19621, 19621.3, 19623, 19627.5, 19628, 19630, and 19630.5 of, to amend and renumber Sections 19620 and 19621.1 of, to add Sections 19620, 19621.1, 19622.1, 19622.2, 19622.3, 19622.4, 19622.5, and 19629 to, and to repeal Sections 19621.2, 19622, 19624, 19625, 19627, 19627.1, 19627.2, 19630.1, and 19630.3 of, the Business and Professions Code, to amend Section 3332 of, and to repeal Section 4401 of, the Food and Agricultural Code, to amend Sections 14852, 25905, and 25906 of the Government Code, and to amend Section 605 of the Unemployment Insurance Code, relating to fairs, 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 19418 of the Business and Professions Code is amended to read:

19418. "State designated fairs," referred to in this chapter as fairs, means the California Exposition and State Fair in the City of Sacramento and those fairs specified in Sections 19418.1, 19418.2, and 19418.3 that may receive financial support or are otherwise governed pursuant to this chapter. These fairs may also be referred to as part of the "network of California fairs."

SEC. 2. Section 19606.1 of the Business and Professions Code is amended to read:

19606.1. (a) Except as otherwise provided in Section 19606.3, all revenues distributed to the state as license fees from satellite wagering facilities shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, are continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Secretary of Food and Agriculture, at his or her discretion, for the purposes set forth in paragraphs (1) to (6), inclusive. The concurrence of the Director of Finance shall be required for allocations pursuant to paragraphs (1) and (2). Allocations pursuant to paragraphs (3) to (6), inclusive, shall be made with the concurrence of the Joint Committee on Fairs Allocation and Classification.

(1) For the repayment of the principal of, interest on, and costs of issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any

advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph, "coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers agency, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance of additional bonds or other indebtedness. Notwithstanding any other provision of law, the department may also commit any funds available for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For payment to the State Race Track Leasing Commission to be pledged for the repayment of debt necessary to construct a racetrack grandstand at the 22nd District Agricultural Association fairgrounds. This payment shall be made only if the Secretary of Food and Agriculture determines, annually, that all other pledged revenues have been applied to the repayment of that debt and have been determined by the secretary to be inadequate for that purpose.

(3) For the payment of expenses incurred in establishing and operating satellite wagering facilities at fairs.

(4) For the support of an equipment and operating fund to produce and display a consolidated California signal at satellite wagering facilities and fairs.

(5) For health and safety repair projects at fairs, which includes fire and life safety improvement projects, California Code of Regulations compliance projects, and long-term deferred maintenance projects.

(6) For the development and payment of revenue generating projects, the establishment of pilot projects to restructure the current fair system, and for projects realizing a cost savings for more efficient utilization of existing fair resources.

(b) The Secretary of Food and Agriculture may not make an allocation for purposes of paragraphs (2) to (6), inclusive, of subdivision (a) until the payments required in any fiscal year pursuant to paragraph (1) of subdivision (a) have been funded.

(c) Pursuant to subdivision (a), the Joint Committee on Fairs Allocation and Classification shall review and concur, or not concur, with the secretary's determination of the allocations to be made pursuant to paragraphs (3) to (6), inclusive, of subdivision (a) in

total, and the committee may not add to, or delete projects or line items from, the proposed allocations.

(d) Approval of the Joint Committee on Fairs Allocation and Classification is deemed complete when one of the following conditions is met:

(1) The annual budget act is enacted.

(2) If the secretary's recommendations are received by the Joint Committee on Fairs Allocation and Classification after the enactment of the annual budget act, the recommendations shall be deemed approved 30 days after they are received unless they are rejected by the committee.

(e) If the Joint Committee on Fairs Allocation and Classification does not concur with the secretary's recommendations, the secretary may submit another set of recommendations to the committee pursuant to this section.

(f) The payments required in any fiscal year for the purposes of paragraphs (1) to (3), inclusive, of subdivision (a) shall be made before any transfer is made pursuant to subdivision (g).

(g) Except as otherwise provided in subdivision (f), when the revenues deposited in the separate account exceed eleven million dollars ($11,000,000) in any fiscal year, 98 percent of the amount in excess of eleven million dollars ($11,000,000) shall be transferred to the General Fund.

(h) All of the costs of administering the accounts created by subdivision (a) and Section 19606.3 shall be charged to the respective accounts.

SEC. 3. Section 19614 of the Business and Professions Code is amended to read:

19614. (a) Notwithstanding Sections 19611 and 19612, and except for an association that qualifies pursuant to Section 19612.6 or 19614.1, the California Exposition and State Fair or a district or county fair shall pay a daily license fee based on its conventional and exotic parimutuel handle, excluding wagering at a satellite wagering facility, at the following rates:

Daily Handle	License Fee Rate
$500,000 or less	2.5 percent of the handle.
$500,000 to $1,000,000	$12,500 plus 3.5 percent of the handle in excess of $500,000.
$1,000,000 to $1,500,000	$30,000 plus 3.75 percent of the handle in excess of $1,000,000.
$1,500,000 or more	$48,740 plus 5 percent of the handle in excess of $1,500,000.

No fair racing association shall pay a license fee under this section in excess of 4.5 percent of its daily parimutuel handle, excluding wagering at a satellite wagering facility.

(b) After distribution of the applicable license fees as set forth in subdivision (a), all funds remaining from the deductions provided in Section 19610 shall be distributed 48 percent as commissions and 52 percent as purses.

Any additional amount generated for purses and not distributed during the previous corresponding meeting shall be added to the purses at the current meeting.

(c) In addition to the amounts deducted pursuant to Section 19610, any fair racing association shall deduct 1 percent from the total amount handled in its daily conventional and exotic parimutuel pools. The additional 1 percent shall be deposited in the Fair and Exposition Fund and is hereby appropriated for the purposes specified in Section 19630.

SEC. 4. Section 19620 of the Business and Professions Code is amended and renumbered to read:

19620.1. (a) From the total revenue received by the board, exclusive of money received pursuant to Sections 19640 and 19641, the sum of two hundred sixty-five thousand dollars ($265,000) plus an amount equal to $^{63}/_{100}$ of 1 percent of the gross amount of money handled in the annual parimutuel pool generated within this state, or the maximum amount received by the state from the parimutuel pool of a racing meeting held in this state, whichever is less, shall be paid into the State Treasury to the credit of the Fair and Exposition Fund. If the revenues paid into the Fair and Exposition Fund under this section are in excess of thirteen million dollars ($13,000,000) in any fiscal year, one-half of the amount in excess of the thirteen million dollars ($13,000,000) shall be transferred to the General Fund.

(b) From the total revenue received by the board, exclusive of money received pursuant to Sections 19640 and 19641, and in addition to the funds paid into the State Treasury to the credit of the Fair and Exposition Fund as specified in subdivision (a), the Legislature shall annually appropriate and the board shall deposit to the credit of the Fair and Exposition Fund, such sums as it deems necessary for the following purposes:

(1) For the support of the board, including any costs and expenses incurred by the Attorney General in the enforcement of this chapter as shall be authorized by the board, including, compensation including any fringe benefits paid to stewards and to the official veterinarian, and an amount not less than the amount expended in the 1994–95 fiscal year for the costs of laboratory testing related to horseracing pursuant to Section 19580.

(2) To the Department of Food and Agriculture for the oversight of the network of California fairs receiving money from the fund.

(3) To the Department of Food and Agriculture for the contributions, or the cost of benefits in lieu of contributions, payable to the Unemployment Fund by the network of California fairs receiving funds pursuant to this article, as a result of unemployment

insurance coverage pursuant to Section 605 of the Unemployment Insurance Code.

(4) To the Department of Food and Agriculture for the auditing of all district agricultural association fairs.

SEC. 4.5. Section 19620 is added to the Business and Professions Code, to read:

19620. (a) The Legislature finds and declares that the Department of Food and Agriculture is responsible for ensuring the integrity of the Fair and Exposition Fund, administering allocations from the fund to the network of California fairs, as defined in Sections 19418 to 19418.3, inclusive, and providing oversight of activities carried out by each California fair.

(b) Oversight shall include, but not be limited to, the following:

(1) Monitoring the solvency of the Fair and Exposition Fund.

(2) Distributing available state resources to the network of California fairs based on criteria for state allocations approved by the Secretary of Food and Agriculture. The criteria for the distribution of available state resources to the network of California fairs shall not include a consideration of the structure that governs the fair.

(3) Creating a framework for administration of the network of California fairs allowing for maximum autonomy and local decisionmaking authority, and conducting, or causing to be conducted, annual fiscal audits and periodic compliance audits.

(4) Guiding and providing incentives to fairs to seek matching funds and generate new revenue from a variety of sources.

(5) Supporting continuous improvement of fair programming to ensure that California fairs remain highly relevant community institutions.

SEC. 4.6. Section 19621 of the Business and Professions Code is amended to read:

19621. (a) Not more than 5 percent of the Fair and Exposition Fund may be used during any fiscal year to augment the budget of the Department of Food and Agriculture to develop and administer an operational and policy framework for the network of California fairs.

(b) The Secretary of Food and Agriculture shall annually project the available revenues from this source and submit a recommendation to the Governor for the additional staff and contracts necessary to oversee the network of California fairs.

(c) The Secretary of Food and Agriculture shall prepare an annual expenditure plan for funds available from the Fair and Exposition Fund for review and approval by the Joint Committee on Fairs Allocation and Classification. The Joint Committee on Fairs Allocation and Classification shall review and concur, or not concur, with the spending plan in total, and may not add to, or delete projects or line items from, the budget.

(d) Approval of the Joint Committee on Fairs Allocation and Classification is deemed complete when one of the following conditions is met:

(1) The annual budget act is enacted.

(2) If the secretary's recommendations are received by the Joint Committee on Fairs Allocation and Classification after the enactment of the annual budget act, the recommendations shall be deemed approved 30 days after they are received unless they are rejected by the committee.

(e) If the Joint Committee on Fairs Allocation and Classification does not concur with the secretary's recommendations, the secretary may submit another set of recommendations to the committee pursuant to this section.

SEC. 5. Section 19621.1 of the Business and Professions Code is amended and renumbered to read:

19621.2. The Secretary of Food and Agriculture shall prepare and submit to the Department of Finance an estimate of the contributions, or the cost of benefits in lieu of contributions, that are payable to the Unemployment Fund by all California fairs receiving funds pursuant to this article. The Director of Finance shall include those estimates in the Budget Bill submitted to the Legislature.

SEC. 6. Section 19621.1 is added to the Business and Professions Code, to read:

19621.1. Notwithstanding any other provision of law, neither the state nor the Department of Food and Agriculture are liable for any contract or tort of, or any action taken by, any fair in the network of California fairs that do not comply with the requirements of Section 19622.3.

No member of the fair board, or any employee or agent thereof, is personally liable for the contracts or actions of the fair board, and no member of the fair board or employee or agent thereof is responsible individually in any way to any other person for error in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member of the fair board shall be held responsible individually for any act or omission of any other member of the fair board. The liability of the members of the fair board is several and not joint, and no member is liable for the default of any other member.

SEC. 7. Section 19621.2 of the Business and Professions Code is repealed.

SEC. 8. Section 19621.3 of the Business and Professions Code is amended to read:

19621.3. (a) The Secretary of Food and Agriculture shall prepare and submit to the Department of Finance an estimate of revenue to be deposited in the fund and allocations to be made from the fund for each fiscal year.

The Director of Finance may authorize short-term, cash-flow loans from the unappropriated surplus of the General Fund to the Fair and Exposition Fund if all of the following conditions are met:

(1) The loan will be repaid during the same fiscal year in which it is made.

(2) No loan exceeds the amount remaining to be allocated in any fiscal year or 75 percent of the revenue estimated to be deposited in the Fair and Exposition Fund during the remainder of the fiscal year.

(b) The Secretary of Food and Agriculture shall notify the State Controller when loans under this section are no longer required and any unnecessary loan funds shall be returned to the General Fund.

SEC. 9. Section 19622 of the Business and Professions Code is repealed.

SEC. 10. Section 19622.1 is added to the Business and Professions Code, to read:

19622.1. (a) Any fair that receives appropriations of state funds or that occupies or utilizes land or facilities owned or leased by the state is included in the network of California fairs. The California Exposition and State Fair and every fair defined as a district agricultural association, county fair, or citrus fruit fair in Sections 19418 to 19418.3, inclusive, is a California fair in the network of California fairs.

(b) To maintain its eligibility to receive funds or to utilize state assets, a California fair shall do all of the following:

(1) File an annual statement of operations with the Department of Food and Agriculture.

(2) Conduct an annual fair that includes agricultural and other community-relevant exhibits and competitions.

(c) The Secretary of Food and Agriculture shall develop an appeal process for fairs to appeal any decision concerning the allocation of funds appropriated to fairs.

SEC. 11. Section 19622.2 is added to the Business and Professions Code, to read:

19622.2. The administrative oversight authority of the Department of Food and Agriculture over the California Exposition and State Fair is, in conjunction with the approval of the Department of Finance, limited to the approval of the California Exposition and State Fair's budget.

SEC. 11.5. Section 19622.3 is added to the Business and Professions Code, to read:

19622.3. (a) The administrative oversight authority of the Department of Food and Agriculture shall include, but is not limited to, requiring district agricultural associations to do all of the following:

(1) Meet all standards prescribed by the Department of Food and Agriculture pursuant to Section 19622.1.

(2) Comply with fiscal and policy directives of the department.

(b) For district agricultural associations that consistently meet or exceed the department's standards for sound operational or financial management, the department may delegate approval authority to the board of directors for budgets, contracts, or maintenance projects.

(c) In the case of impending insolvency, or on the basis of evidence of insufficient fiscal controls at a district agricultural association, the department, in order to protect the integrity of the Fair and Exposition Fund, may make allocations from the Fair and Exposition Fund for restricted purposes only, rather than for general support and operations.

SEC. 12. Section 19622.4 is added to the Business and Professions Code, to read:

19622.4. The administrative oversight authority of the Department of Food and Agriculture shall include, but is not limited to, requiring county fairs and citrus fruit fairs to do both of the following:

(a) Meet all standards prescribed by the Department of Food and Agriculture pursuant to Section 19622.1.

(b) Submit to the department for review and approval every five years the written agreement between the entity producing the county fair and the host county to ensure that operation protocols for every county fair are parallel to state fiscal and policy directives that apply to district agricultural associations.

SEC. 13. Section 19622.5 is added to the Business and Professions Code, to read:

19622.5. (a) When a district agricultural association becomes insolvent, the Department of Food and Agriculture shall assume control in order to ensure restoration of fiscal solvency.

(b) The Secretary of Food and Agriculture shall do, but not be limited to doing, all of the following:

(1) Implement substantial changes in the district's fiscal policies and practices, including, but not limited to, filing a petition under Chapter 9 of the federal Bankruptcy Act for the adjustment of indebtedness, if necessary.

(2) Assume all legal rights, duties, and powers of the governing board of the district fair.

SEC. 14. Section 19623 of the Business and Professions Code is amended to read:

19623. Funds appropriated from the Fair and Exposition Fund may be expended for the payment of premiums, for capital outlay purposes, including the purchase of land and equipment for construction and improvements, and for the general support and maintenance of the network of California fairs and for the department's oversight of the network of California fairs.

SEC. 15. Section 19624 of the Business and Professions Code is repealed.

SEC. 16. Section 19625 of the Business and Professions Code is repealed.

SEC. 17. Section 19627 of the Business and Professions Code is repealed.

SEC. 18. Section 19627.1 of the Business and Professions Code is repealed.

SEC. 19. Section 19627.2 of the Business and Professions Code is repealed.

SEC. 20. Section 19627.5 of the Business and Professions Code is amended to read:

19627.5. Notwithstanding Section 19623, any unanticipated revenues, other than any allocation from the state, which are in excess of the approved budget for any fiscal or calendar year of any California fair shall be retained by that fair and may be expended for any purpose specified in Section 19630.

These funds may be expended, without regard to any fiscal year, by any fair to which Section 19623 applies, upon positive action by the board of directors of that fair, which shall be recorded in the official minutes of the fair approving a plan of expenditure for those funds for the purposes specified in Section 19630.

SEC. 21. Section 19628 of the Business and Professions Code is amended to read:

19628. If any California fair does not hold a fair in any year because of war conditions, or because the grounds or buildings of the fair have been taken over and occupied by the United States or its armed forces, or that fair is not held due to an act of God, or any unavoidable catastrophe, natural or human made, the fair shall nevertheless submit an annual statement of operations and shall not resume operations without a budget that has been approved by the Department of Food and Agriculture.

SEC. 22. Section 19629 is added to the Business and Professions Code, to read:

19629. The Department of Food and Agriculture may make and may administer loans from the Fair and Exposition Fund to any fair in the network of California fairs according to agreements that are specific to the circumstances that gave rise to a receiving fair's need for a loan, subject to the fair's demonstrated ability to repay the loan.

SEC. 23. Section 19630 of the Business and Professions Code is amended to read:

19630. (a) Any unallocated balance from subdivision (a) of Section 19620.1 is hereby appropriated without regard to fiscal years for allocation by the Secretary of Food and Agriculture for capital outlay to California fairs for fair projects involving public health and safety, for fair projects involving major and deferred maintenance, for fair projects necessary due to any emergency, for projects that are required by physical changes to the fair site, for projects that are required to protect the fair property or installation, such as fencing and flood protection, and for the acquisition or improvement of any

property or facility that will serve to enhance the operation of the fair.

(b) It is the intent of the Legislature that these moneys be used primarily for those fairs whose sources of revenue may be limited for purposes specified in this section.

SEC. 24. Section 19630.1 of the Business and Professions Code is repealed.

SEC. 25. Section 19630.3 of the Business and Professions Code is repealed.

SEC. 26. Section 19630.5 of the Business and Professions Code is amended to read:

19630.5. Notwithstanding any other provision of law, any fair qualified to receive an allocation that has complied with the requirements set forth in subdivision (b) of Section 19622.1, with the approval of the Department of Food and Agriculture, may expend available funds for the construction or operation of recreational and cultural facilities of general public interest.

SEC. 27. Section 3332 of the Food and Agricultural Code is amended to read:

3332. The board may do any of the following:

(a) Contract.

(b) Accept funds or gifts of value from the United States or any person to aid in carrying out the purposes of this part.

(c) Conduct or contract for programs, either independently or in cooperation with any individual, public or private organization, or federal, state, or local governmental agency.

(d) Establish and maintain a bank checking account or a savings and loan association account, approved by the Director of Finance in accordance with Sections 16506 and 16605 of the Government Code, for depositing funds appropriated to the California Exposition and State Fair pursuant to Section 19623 of the Business and Professions Code. The Department of Finance shall audit the account at the end of each fiscal year.

(e) Make or adopt all necessary orders, rules, or regulations for governing the activities of the California Exposition and State Fair.

(f) Delegate to the officers and employees of the California Exposition and State Fair the authority to appoint civil service personnel according to state civil service procedures.

(g) Delegate to the officers and employees of the California Exposition and State Fair the exercise of powers vested in the board as the board may deem desirable for the orderly management and operation of the California Exposition and State Fair.

(h) Appoint all necessary marshals and police to keep order and preserve peace at the California Exposition and State Fair premises on a year-round basis who shall have the powers of peace officers specified in Section 830.2 of the Penal Code. A peace officer of the Department of the California Highway Patrol may be employed as a peace officer while off duty from his or her regular employment,

subject to those conditions as may be set forth by the Commissioner of the Department of the California Highway Patrol. At least 75 percent of the persons appointed pursuant to this subdivision shall possess the basic certificate issued by the Commission on Peace Officers Standards and Training. The remaining 25 percent may be appointed if the person has completed a Peace Officer Standards and Training certified academy or possesses a Level One Reserve Certificate (as defined in Section 832.6 of the Penal Code).

(i) Lease, with the approval of the Department of General Services, any of its property for any purpose for any period of time.

(j) Use or manage any of its property, with the approval of the Department of General Services, jointly or in connection with any lessee or sublessee, for any purpose approved by the board.

SEC. 28. Section 4401 of the Food and Agricultural Code is repealed.

SEC. 29. Section 14852 of the Government Code is amended to read:

14852. All printing required by the California Exposition and State Fair and district agricultural associations is exempt from Section 14850.

SEC. 30. Section 25905 of the Government Code is amended to read:

25905. The board of supervisors may contract with a nonprofit corporation or association for the conducting of an agricultural fair, as agent of the county, for a period not exceeding five years. The contract may provide for the use, possession, and management of any public park or fairgrounds by the nonprofit corporation, as agent of the county, during the period of the contract.

All net proceeds received by the nonprofit corporation, from whatever source, shall be deposited within 60 days after the conclusion of any fair in a county fair fund that shall be established in the county treasury for that purpose. The moneys in the fund shall be expended only for support of the county fair, including maintenance and operation of the county fair facilities, premiums, purposes incidental to the fair, capital outlay for fair purposes and for the acquisition or purchase of real property to be used for fair purposes.

The corporation shall submit an annual budget to the Department of Food and Agriculture, showing the estimated revenues and the proposed expenditures from all sources during the ensuing calendar year, which budget shall first be approved by the county board of supervisors.

Any other provisions of law relating to county fairs as a condition to receiving an allocation of state money for fair purposes shall be observed by the nonprofit corporation.

When that use, possession, and management is granted, the board may also allocate and pay to the nonprofit corporation in advance a

sum of money it deems necessary to be used for the purposes for which that use, possession, and management is granted.

SEC. 31. Section 25906 of the Government Code is amended to read:

25906. The board of supervisors of a county may contract with a nonprofit corporation or association for the conducting of an agricultural fair in the county for the period and under those conditions as the board may determine. The contracts may provide for the use, possession, and management of any public park or fairgrounds by the nonprofit corporation during the period of the contract. When that use, possession, and management is granted, the board may also allocate to the nonprofit corporation a sum of money it deems necessary to be used for any purpose incidental to the fair. If the contract involves the use of property acquired with money derived from the state or if the contract contemplates the use of money allocated or appropriated by the state for the fair, the contract shall be subject to approval by the Department of Food and Agriculture. If the county desires to receive an allocation under Section 4401 of the Food and Agricultural Code, the corporation shall submit an annual budget to the Department of Food and Agriculture, showing the estimated revenues and the proposed expenditures from all sources during the ensuing calendar year, which budget shall first be approved by the board of supervisors. The corporation shall also comply with any other provisions of law relating to county fairs as a condition necessary for the county to receive an allocation of state money for fair purposes. Upon the dissolution of any such corporation all property and assets thereof within the county with which it contracts shall be paid to that county.

SEC. 32. Section 605 of the Unemployment Insurance Code is amended to read:

605. (a) Except as provided by Section 634.5, "employment" for the purposes of this part and Parts 3 (commencing with Section 3501) and 4 (commencing with Section 4001) includes all service performed by an individual (including blind and otherwise handicapped individuals) for any public entity, if the service is excluded from "employment" under the Federal Unemployment Tax Act solely by reason of paragraph (7) of Section 3306(c) of that act.

(b) As used in this section, "public entity" means the State of California (including the Trustees of the California State University and Colleges, and the California Industries for the Blind), any instrumentality of this state (including the Regents of the University of California), any political subdivision of this state or any of its instrumentalities, a county, city, district (including the governing board of any school district or community college district, any county board of education, any county superintendent of schools, or any personnel commission of a school district or community college district that has a merit system pursuant to any provision of the

Education Code), entities conducting fairs as identified in Sections 19418 to 19418.3, inclusive, of the Business and Professions Code, any public authority, public agency, or public corporation of this state, any instrumentality of more than one of the foregoing, and any instrumentality of any of the foregoing and one or more other states or political subdivisions.

SEC. 33. 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 1111

An act to add Section 41204.1 to the Education Code, and to amend Sections 97.2 and 97.3 of the Revenue and Taxation Code, relating to local government finance.

[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 41204.1 is added to the Education Code, to read:

41204.1. (a) Pursuant to paragraph (2) of subdivision (b) of Section 41204, the Director of Finance shall annually adjust "the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in the 1986–87 fiscal year" for purposes of applying paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, to reflect those property tax revenue allocation modifications, required by the amendments made to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code by the act adding this section, in a manner that ensures that those modifications will have no net fiscal impact upon the amounts that are otherwise required to be applied by the state for the support of school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.

(b) It is the intent of the Legislature in enacting the act adding this section to ensure both of the following:

(1) That the changes required by the act adding this section in the allocations of ad valorem property tax revenues do not have a net fiscal impact upon school districts, as defined in accordance with Section 41302.5, or community college districts.

(2) That the changes required by the act adding this section in the allocations of ad valorem property tax revenues do not have a net fiscal impact upon the amounts of revenue otherwise required to be applied by the state for the support of school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.

SEC. 2. Section 97.2 of the Revenue and Taxation Code is amended to read:

97.2. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section shall be modified for the 1992–93 fiscal year pursuant to subdivisions (a) to (d), inclusive, and for the 1997–98 and 1998–99 fiscal years pursuant to subdivision (e), as follows:

(a) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each county shall be reduced by the dollar amounts indicated as follows, multiplied by .953649:

	Property Tax Reduction per County
Alameda	$ 27,323,576
Alpine	5,169
Amador	286,131
Butte	846,452
Calaveras	507,526
Colusa	186,438
Contra Costa	12,504,318
Del Norte	46,523
El Dorado	1,544,590
Fresno	5,387,570
Glenn	378,055
Humboldt	1,084,968
Imperial	998,222
Inyo	366,402
Kern	6,907,282
Kings	1,303,774

Lake	998,222
Lassen	93,045
Los Angeles	244,178,806
Madera	809,194
Marin	3,902,258
Mariposa	40,136
Mendocino	1,004,112
Merced	2,445,709
Modoc	134,650
Mono	319,793
Monterey	2,519,507
Napa	1,362,036
Nevada	762,585
Orange	9,900,654
Placer	1,991,265
Plumas	71,076
Riverside	7,575,353
Sacramento	15,323,634
San Benito	198,090
San Bernardino	14,467,099
San Diego	17,687,776
San Francisco	53,266,991
San Joaquin	8,574,869
San Luis Obispo	2,547,990
San Mateo	7,979,302
Santa Barbara	4,411,812
Santa Clara	20,103,706
Santa Cruz	1,416,413
Shasta	1,096,468
Sierra	97,103
Siskiyou	467,390
Solano	5,378,048
Sonoma	5,455,911
Stanislaus	2,242,129
Sutter	831,204
Tehama	450,559
Trinity	50,399
Tulare	4,228,525
Tuolumne	740,574
Ventura	9,412,547

Yolo	1,860,499
Yuba	842,857

(2) Notwithstanding paragraph (1), the amount of the reduction specified in that paragraph for any county or city and county that has been materially and substantially impacted as a result of a federally declared disaster, as evidenced by at least 20 percent of the cities, or cities and unincorporated areas of the county representing 20 percent of the population within the county suffering substantial damage, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date of this section, shall be reduced by that portion of five million dollars ($5,000,000) determined for that county or city and county pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each county and city and county in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each county and city and county as described in subparagraph (A) its share of five million dollars ($5,000,000) on the basis of that county's population relative to the total population of all counties described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(b) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each city, except for a newly incorporated city that did not receive property tax revenues in the 1991–92 fiscal year, shall be reduced by 9 percent. In making the above computation with respect to cities in Alameda County, the computation for a city described in paragraph (6) of subdivision (a) of Section 100.7, as added by Section 73.5 of Chapter 323 of the Statutes of 1983, shall be adjusted so that the amount multiplied by 9 percent is reduced by the amount determined for that city for "museums" pursuant to paragraph (2) of subdivision (h) of Section 95.

(2) Notwithstanding paragraph (1), the amount of the reduction determined pursuant to that paragraph for any city that has been materially and substantially impacted as a result of a federally declared disaster, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date of this section, shall be reduced by that portion of fifteen million dollars ($15,000,000) determined for that city pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each city in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each city as described in subparagraph (A) its share of fifteen million dollars ($15,000,000) on the basis of that city's population relative to the total population of all cities described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(4) In the 1992–93 fiscal year and each fiscal year thereafter, the auditor shall adjust the computations required pursuant to Article 4 (commencing with Section 98) so that those computations do not result in the restoration of any reduction required pursuant to this section.

(c) (1) Subject to paragraph (2), the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district governed by a city council or whose governing board has the same membership as a city council, shall be reduced by 35 percent. For purposes of this subdivision, "revenues that are pledged to debt service" include only those amounts required to pay debt service costs in the 1991–92 fiscal year on debt instruments issued by a special district for the acquisition of capital assets.

(2) No reduction pursuant to paragraph (1) for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that district's total annual revenues, from whatever source, as shown in the 1989–90 edition of the State Controller's Report on Financial Transactions Concerning Special Districts (not including any annual revenues from fiscal years following the 1989–90 fiscal year). With respect to any special district, as defined pursuant to subdivision (m) of Section 95, that is allocated property tax revenue pursuant to this chapter but does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, the auditor shall determine the total annual revenues for that special district from the information in the 1989–90 edition of the State Controller's Report on Financial Transactions Concerning Counties. With respect to a special district that did not exist in the 1989–90 fiscal year, the auditor may use information from the first full fiscal year, as appropriate, to determine the total annual revenues for that special district. No reduction pursuant to paragraph (1) for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(3) The auditor in each county shall, on or before January 15, 1993, and on or before January 30 of each year thereafter, submit information to the Controller concerning the amount of the property

tax revenue reduction to each special district within that county as a result of paragraphs (1) and (2). The Controller shall certify that the calculation of the property tax revenue reduction to each special district within that county is accurate and correct, and submit this information to the Director of Finance.

(A) The Director of Finance shall determine whether the total of the amounts of the property tax revenue reductions to special districts, as certified by the Controller, is equal to the amount that would be required to be allocated to school districts and community college districts as a result of a three hundred seventy-five million dollar ($375,000,000) shift of property tax revenues from special districts for the 1992–93 fiscal year. If, for any year, the total of the amount of the property tax revenue reductions to special districts is less than the amount as described in the preceding sentence, the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district governed by a city council or whose governing board has the same membership as a city council, shall, subject to subparagraph (B), be reduced by an amount up to 5 percent of the amount subject to reduction for that district pursuant to paragraphs (1) and (2).

(B) No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that district's total annual revenues, from whatever source, as shown in the most recent State Controller's Report on Financial Transactions Concerning Special Districts. No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(C) In no event shall the amount of the property tax revenue loss to a special district derived pursuant to subparagraphs (A) and (B) exceed 40 percent of that district's property tax revenues or 10 percent of that district's total revenues, from whatever source.

(4) For the purpose of determining the total annual revenues of a special district that provides fire protection or fire suppression services, all of the following shall be excluded from the determination of total annual revenues:

(A) If the district had less than two million dollars ($2,000,000) in total annual revenues in the 1991–92 fiscal year, the revenue generated by a fire suppression assessment levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

(B) Any appropriation for fire protection received by a district pursuant to Section 25642 of the Government Code.

(C) The revenue received by a district as a result of contracts entered into pursuant to Section 4133 of the Public Resources Code.

(5) For the purpose of determining the total annual revenues of a resource conservation district, all of the following shall be excluded from the determination of total annual revenues:

(A) Any revenues received by that district from the state for financing the acquisition of land, or the construction or improvement of state projects, and for which that district serves as the fiscal agent in administering those state funds pursuant to an agreement entered into between that district and a state agency.

(B) Any amount received by that district as a private gift or donation.

(C) Any amount received as a county grant or contract as supplemental to, or independent of, that district's property tax share.

(D) Any amount received by that district as a federal or state grant.

(d) (1) The amount of property tax revenues not allocated to the county, cities within the county, and special districts as a result of the reductions calculated pursuant to subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund to be established in each county. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1991–92 fiscal year.

(2) The auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district and county office of education in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district and county office of education. In no event shall any additional money be allocated from the fund to a school district or county office of education upon that school district or county office of education becoming an excess tax school entity.

(3) The auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those community college districts within the county that are not excess tax school entities, as defined in subdivision

(n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the fund to a community college district upon that district becoming an excess tax school entity.

(4) (A) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2).

(B) (i) For the 1995–96 fiscal year and each fiscal year thereafter, if, after making the allocations pursuant to paragraphs (2) and (3) and subparagraph (A), the auditor determines that there are still additional funds to be allocated, the auditor shall, subject to clauses (ii) and (iii), allocate those excess funds to the county superintendent of schools. Funds allocated pursuant to this subparagraph shall be counted as property tax revenues for special education programs in augmentation of the amount calculated pursuant to Section 2572 of the Education Code, to the extent that those property tax revenues offset state aid for county offices of education and school districts within the county pursuant to Section 56712 of the Education Code.

(ii) For the 1995–96 fiscal year only, this subparagraph shall have no application to the County of Mono and the amount allocated pursuant to this subparagraph in the County of Marin shall not exceed five million dollars ($5,000,000).

(iii) For the 1996–97 fiscal year only, the total amount of funds allocated by the auditor pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 shall not exceed that portion of two million five hundred thousand dollars ($2,500,000) that corresponds to the county's proportionate share of all moneys allocated pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 for the 1995–96 fiscal year. Upon the request of the auditor, the Department of Finance shall provide to the auditor all information in the department's possession that is necessary for the auditor to comply with this clause.

(C) For purposes of allocating the Educational Revenue Augmentation Fund for the 1996–97 fiscal year, the auditor shall, after making the allocations for special education programs, if any, required by subparagraph (B), allocate all remaining funds among the county, cities, and special districts in proportion to the amounts of ad valorem property tax revenue otherwise required to be shifted from those local agencies to the county's Educational Revenue Augmentation Fund for the relevant fiscal year. For purposes of ad

valorem property tax revenue allocations for the 1997–98 fiscal year and each fiscal year thereafter, no amount of ad valorem property tax revenue allocated to the county, a city, or a special district pursuant to this subparagraph shall be deemed to be an amount of ad valorem property tax revenue allocated to that local agency in the prior fiscal year.

(5) For purposes of allocations made pursuant to Section 96.1 or its predecessor section for the 1993–94 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than amounts deposited in the Educational Revenue Augmentation Fund pursuant to Section 33681 of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(e) (1) For the 1997–98 fiscal year:

(A) The amount of property tax revenue deemed allocated in the prior fiscal year to any city subject to the reduction specified in paragraph (2) of subdivision (b) shall be reduced by an amount that is equal to the difference between the amount determined for the city pursuant to paragraph (1) of subdivision (b) and the amount of the reduction determined for the city pursuant to paragraph (2) of subdivision (b).

(B) The amount of property tax revenue deemed allocated in the prior fiscal year to any county or city and county subject to the reduction specified in paragraph (2) of subdivision (a) shall be reduced by an amount that is equal to the difference between the amount specified for the county or city and county pursuant to paragraph (1) of subdivision (a) and the amount of the reduction determined for the county or city and county pursuant to paragraph (2) of subdivision (a).

(2) The amount of property tax revenues not allocated to a city or city and county as a result of this subdivision shall be deposited in the Educational Revenue Augmentation Fund described in subparagraph (A) of paragraph (1) of subdivision (d).

(3) For purposes of allocations made pursuant to Section 96.1 for the 1998–99 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision shall be deemed property tax revenues allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(f) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 97.03 of the Revenue and Taxation Code, as added by Senate Bill 617 of the 1991–92 Regular Session.

SEC. 2.5. Section 97.2 of the Revenue and Taxation Code is amended to read:

97.2. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section shall be modified for the

1992–93 fiscal year pursuant to subdivisions (a) to (d), inclusive, and for the 1997–98 and 1998–99 fiscal years pursuant to subdivision (e), as follows:

(a) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each county shall be reduced by the dollar amounts indicated as follows, multiplied by .953649:

	Property Tax Reduction per County
Alameda	$ 27,323,576
Alpine	5,169
Amador	286,131
Butte	846,452
Calaveras	507,526
Colusa	186,438
Contra Costa	12,504,318
Del Norte	46,523
El Dorado	1,544,590
Fresno	5,387,570
Glenn	378,055
Humboldt	1,084,968
Imperial	998,222
Inyo	366,402
Kern	6,907,282
Kings	1,303,774
Lake	998,222
Lassen	93,045
Los Angeles	244,178,806
Madera	809,194
Marin	3,902,258
Mariposa	40,136
Mendocino	1,004,112
Merced	2,445,709
Modoc	134,650
Mono	319,793
Monterey	2,519,507
Napa	1,362,036
Nevada	762,585
Orange	9,900,654
Placer	1,991,265

Plumas	71,076
Riverside	7,575,353
Sacramento	15,323,634
San Benito	198,090
San Bernardino	14,467,099
San Diego	17,687,776
San Francisco	53,266,991
San Joaquin	8,574,869
San Luis Obispo	2,547,990
San Mateo	7,979,302
Santa Barbara	4,411,812
Santa Clara	20,103,706
Santa Cruz	1,416,413
Shasta	1,096,468
Sierra	97,103
Siskiyou	467,390
Solano	5,378,048
Sonoma	5,455,911
Stanislaus	2,242,129
Sutter	831,204
Tehama	450,559
Trinity	50,399
Tulare	4,228,525
Tuolumne	740,574
Ventura	9,412,547
Yolo	1,860,499
Yuba	842,857

(2) Notwithstanding paragraph (1), the amount of the reduction specified in that paragraph for any county or city and county that has been materially and substantially impacted as a result of a federally declared disaster, as evidenced by at least 20 percent of the cities, or cities and unincorporated areas of the county representing 20 percent of the population within the county suffering substantial damage, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date of this section, shall be reduced by that portion of five million dollars ($5,000,000) determined for that county or city and county pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each county and city and county in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each county and city and county as described in subparagraph (A) its share of five million dollars ($5,000,000) on the basis of that county's population relative to the total population of all counties described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(b) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each city, except for a newly incorporated city that did not receive property tax revenues in the 1991–92 fiscal year, shall be reduced by 9 percent. In making the above computation with respect to cities in Alameda County, the computation for a city described in paragraph (6) of subdivision (a) of Section 100.7, as added by Section 73.5 of Chapter 323 of the Statutes of 1983, shall be adjusted so that the amount multiplied by 9 percent is reduced by the amount determined for that city for "museums" pursuant to paragraph (2) of subdivision (h) of Section 95.

(2) Notwithstanding paragraph (1), the amount of the reduction determined pursuant to that paragraph for any city that has been materially and substantially impacted as a result of a federally declared disaster, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date of this section, shall be reduced by that portion of fifteen million dollars ($15,000,000) determined for that city pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each city in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each city as described in subparagraph (A) its share of fifteen million dollars ($15,000,000) on the basis of that city's population relative to the total population of all cities described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(4) In the 1992–93 fiscal year and each fiscal year thereafter, the auditor shall adjust the computations required pursuant to Article 4 (commencing with Section 98) so that those computations do not result in the restoration of any reduction required pursuant to this section.

(c) (1) Subject to paragraph (2), the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district

governed by a city council or whose governing board has the same membership as a city council, shall be reduced by 35 percent. For purposes of this subdivision, "revenues that are pledged to debt service" include only those amounts required to pay debt service costs in the 1991–92 fiscal year on debt instruments issued by a special district for the acquisition of capital assets.

(2) No reduction pursuant to paragraph (1) for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that district's total annual revenues, from whatever source, as shown in the 1989–90 edition of the State Controller's Report on Financial Transactions Concerning Special Districts (not including any annual revenues from fiscal years following the 1989–90 fiscal year). With respect to any special district, as defined pursuant to subdivision (m) of Section 95, that is allocated property tax revenue pursuant to this chapter but does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, the auditor shall determine the total annual revenues for that special district from the information in the 1989–90 edition of the State Controller's Report on Financial Transactions Concerning Counties. With respect to a special district that did not exist in the 1989–90 fiscal year, the auditor may use information from the first full fiscal year, as appropriate, to determine the total annual revenues for that special district. No reduction pursuant to paragraph (1) for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(3) The auditor in each county shall, on or before January 15, 1993, and on or before January 30 of each year thereafter, submit information to the Controller concerning the amount of the property tax revenue reduction to each special district within that county as a result of paragraphs (1) and (2). The Controller shall certify that the calculation of the property tax revenue reduction to each special district within that county is accurate and correct, and submit this information to the Director of Finance.

(A) The Director of Finance shall determine whether the total of the amounts of the property tax revenue reductions to special districts, as certified by the Controller, is equal to the amount that would be required to be allocated to school districts and community college districts as a result of a three hundred seventy-five million dollar ($375,000,000) shift of property tax revenues from special districts for the 1992–93 fiscal year. If, for any year, the total of the amount of the property tax revenue reductions to special districts is less than the amount as described in the preceding sentence, the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district governed by a city council or whose governing

board has the same membership as a city council, shall, subject to subparagraph (B), be reduced by an amount up to 5 percent of the amount subject to reduction for that district pursuant to paragraphs (1) and (2).

(B) No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that district's total annual revenues, from whatever source, as shown in the most recent State Controller's Report on Financial Transactions Concerning Special Districts. No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(C) In no event shall the amount of the property tax revenue loss to a special district derived pursuant to subparagraphs (A) and (B) exceed 40 percent of that district's property tax revenues or 10 percent of that district's total revenues, from whatever source.

(4) For the purpose of determining the total annual revenues of a special district that provides fire protection or fire suppression services, all of the following shall be excluded from the determination of total annual revenues:

(A) If the district had less than two million dollars ($2,000,000) in total annual revenues in the 1991–92 fiscal year, the revenue generated by a fire suppression assessment levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

(B) Any appropriation for fire protection received by a district pursuant to Section 25642 of the Government Code.

(C) The revenue received by a district as a result of contracts entered into pursuant to Section 4133 of the Public Resources Code.

(5) For the purpose of determining the total annual revenues of a resource conservation district, all of the following shall be excluded from the determination of total annual revenues:

(A) Any revenues received by that district from the state for financing the acquisition of land, or the construction or improvement of state projects, and for which that district serves as the fiscal agent in administering those state funds pursuant to an agreement entered into between that district and a state agency.

(B) Any amount received by that district as a private gift or donation.

(C) Any amount received as a county grant or contract as supplemental to, or independent of, that district's property tax share.

(D) Any amount received by that district as a federal or state grant.

(d) (1) The amount of property tax revenues not allocated to the county, cities within the county, and special districts as a result of the reductions calculated pursuant to subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund to be established in each county. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1991–92 fiscal year.

(2) The auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district and county office of education in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district and county office of education. In no event shall any additional money be allocated from the fund to a school district or county office of education upon that school district or county office of education becoming an excess tax school entity.

(3) The auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the fund to a community college district upon that district becoming an excess tax school entity.

(4) (A) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2).

(B) (i) For the 1995–96 and 1996–97 fiscal years only, if, after making the allocations pursuant to paragraphs (2) and (3) and subparagraph (A), the auditor determines that there are still additional funds to be allocated, the auditor shall, subject to clauses (ii) and (iii), allocate those excess funds to the county

superintendent of schools. Funds allocated pursuant to this subparagraph shall be counted as property tax revenues for special education programs in augmentation of the amount calculated pursuant to Section 2572 of the Education Code, to the extent that those property tax revenues offset state aid for county offices of education and school districts within the county pursuant to Section 56712 of the Education Code.

(ii) For the 1995–96 fiscal year only, this subparagraph shall have no application to the County of Mono and the amount allocated pursuant to this subparagraph in the County of Marin shall not exceed five million dollars ($5,000,000).

(iii) For the 1996–97 fiscal year only, the total amount of funds allocated by the auditor pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 shall not exceed that portion of two million five hundred thousand dollars ($2,500,000) that corresponds to the county's proportionate share of all moneys allocated pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 for the 1995–96 fiscal year. Upon the request of the auditor, the Department of Finance shall provide to the auditor all information in the department's possession that is necessary for the auditor to comply with this clause.

(C) For purposes of allocating the Educational Revenue Augmentation Fund for the 1996–97 fiscal year and each fiscal year thereafter, the auditor shall, after making the allocations for special education programs, if any, required by subparagraph (B), allocate all remaining funds among the county, cities, and special districts in proportion to the amounts of ad valorem property tax revenue otherwise required to be shifted from those local agencies to the county's Educational Revenue Augmentation Fund for the relevant fiscal year. For purposes of ad valorem property tax revenue allocations for the 1997–98 fiscal year and each fiscal year thereafter, no amount of ad valorem property tax revenue allocated to the county, a city, or a special district pursuant to this subparagraph shall be deemed to be an amount of ad valorem property tax revenue allocated to that local agency in the prior fiscal year.

(5) For purposes of allocations made pursuant to Section 96.1 or its predecessor section for the 1993–94 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than amounts deposited in the Educational Revenue Augmentation Fund pursuant to Section 33681 of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(e) (1) For the 1997–98 fiscal year:

(A) The amount of property tax revenue deemed allocated in the prior fiscal year to any city subject to the reduction specified in paragraph (2) of subdivision (b) shall be reduced by an amount that

is equal to the difference between the amount determined for the city pursuant to paragraph (1) of subdivision (b) and the amount of the reduction determined for the city pursuant to paragraph (2) of subdivision (b).

(B) The amount of property tax revenue deemed allocated in the prior fiscal year to any county or city and county subject to the reduction specified in paragraph (2) of subdivision (a) shall be reduced by an amount that is equal to the difference between the amount specified for the county or city and county pursuant to paragraph (1) of subdivision (a) and the amount of the reduction determined for the county or city and county pursuant to paragraph (2) of subdivision (a).

(2) The amount of property tax revenues not allocated to a city or city and county as a result of this subdivision shall be deposited in the Educational Revenue Augmentation Fund described in subparagraph (A) of paragraph (1) of subdivision (d).

(3) For purposes of allocations made pursuant to Section 96.1 for the 1998–99 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision shall be deemed property tax revenues allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(f) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 97.03 of the Revenue and Taxation Code, as added by Senate Bill 617 of the 1991–92 Regular Session.

SEC. 3. Section 97.3 of the Revenue and Taxation Code is amended to read:

97.3. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section, as modified by Section 97.2 or its predecessor section for the 1992–93 fiscal year, shall be modified for the 1993–94 fiscal year pursuant to subdivisions (a) to (c), inclusive, as follows:

(a) The amount of property tax revenue deemed allocated in the prior fiscal year to each county and city and county shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions for counties and cities and counties determined pursuant to this section shall be one billion nine hundred ninety-eight million dollars ($1,998,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of the reduction for each county or city and county as follows:

(A) The proportionate share of the property tax revenue reduction for each county or city and county that would have been imposed on all counties under the proposal specified in the "May Revision of the 1993–94 Governor's Budget" shall be determined by reference to the document entitled "Estimated County Property Tax

Transfers Under Governor's May Revision Proposal," published by the Legislative Analyst's Office on June 1, 1993.

(B) Each county's or city and county's proportionate share of total taxable sales in all counties in the 1991–92 fiscal year shall be determined.

(C) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (A) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(D) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (B) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(E) The Director of Finance shall add the amounts determined pursuant to subparagraphs (C) and (D) for each county and city and county, and divide the resulting figure by two. The amount so determined for each county and city and county shall be divided by a factor of 1.038. The resulting figure shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior fiscal year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee its determination of the amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify the auditor of each county and city and county of the amount of property tax revenue reduction determined for each county and city and county.

(5) Notwithstanding any other provision of this subdivision, the amount of the reduction specified in paragraph (2) for any county or city and county that has first implemented, for the 1993–94 fiscal year, the alternative procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8 shall be reduced, for the 1993–94 fiscal year only, in the amount of any increased revenue allocated to each qualifying school entity that would not have been allocated for the 1993–94 fiscal year but for the implementation of that alternative procedure. For purposes of this paragraph, "qualifying school entity" means any school district, county office of education, or community college district that is not an excess tax school entity as defined in Section 95.1. Notwithstanding any other provision of this paragraph, the amount of any reduction calculated pursuant to this paragraph for any county or city and county shall not exceed the reduction calculated for that county or city and county pursuant to paragraph (2).

(b) The amount of property tax revenue deemed allocated in the prior fiscal year to each city shall be reduced by an amount to be

determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions determined for cities pursuant to this section shall be two hundred eighty-eight million dollars ($288,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of reduction for each city as follows:

(A) The amount of property tax revenue that is estimated to be attributable in the 1993–94 fiscal year to the amount of each city's state assistance payment received by that city pursuant to Chapter 282 of the Statutes of 1979 shall be determined.

(B) A factor for each city equal to the amount determined pursuant to subparagraph (A) for that city, divided by the total of the amounts determined pursuant to subparagraph (A) for all cities, shall be determined.

(C) An amount for each city equal to the factor determined pursuant to subparagraph (B), multiplied by three hundred eighty-two million five hundred thousand dollars ($382,500,000), shall be determined.

(D) In no event shall the amount for any city determined pursuant to subparagraph (C) exceed a per capita amount of nineteen dollars and thirty-one cents ($19.31), as determined in accordance with that city's population on January 1, 1993, as estimated by the Department of Finance.

(E) The amount determined for each city pursuant to subparagraphs (C) and (D) shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee those amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify each county auditor of the amount of property tax revenue reduction determined for each city located within that county.

(c) (1) The amount of property tax revenue deemed allocated in the prior fiscal year to each special district, as defined pursuant to subdivision (m) of Section 95, shall be reduced by the amount determined for the district pursuant to paragraph (3) and increased by the amount determined for the district pursuant to paragraph (4). The total net amount of these changes is intended to equal two hundred forty-four million dollars ($244,000,000) in the 1993–94 fiscal year.

(2) (A) Notwithstanding any other provision of this subdivision, no reduction shall be made pursuant to this subdivision with respect to any of the following special districts:

(i) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(ii) A water agency that does not sell water at retail, but not including an agency the primary function of which, as determined on the basis of total revenues, is flood control.

(iii) A transit district.

(iv) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(v) A special district that was a multicounty special district as of July 1, 1979.

(B) Notwithstanding any other provision of this subdivision, the first one hundred four thousand dollars ($104,000) of the amount of any reduction that otherwise would be made under this subdivision with respect to a qualifying community services district shall be excluded. For purposes of this subparagraph, a "qualifying community services district" means a community service district that meets all of the following requirements:

(i) Was formed pursuant to Division 3 (commencing with Section 61000) of Title 6 of the Government Code.

(ii) Succeeded to the duties and properties of a police protection district upon the dissolution of that district.

(iii) Currently provides police protection services to substantially the same territory as did that district.

(iv) Is located within a county in which the board of supervisors has requested the Department of Finance that this subparagraph be operative in the county.

(3) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district equal to the amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993–94 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of former Section 98.6 as that section read on June 15, 1993. In those counties that were subject to former Sections 98.66, 98.67, and 98.68, as those sections read on that same date, the county auditor shall determine an amount for each special district that represents the current amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993–94 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In that county subject to Section 100.4, the county auditor shall determine an amount for each special district that represents the current amount of its allocations determined pursuant to Section 96, 96.1, 96.5, or 100.4 or their predecessor sections for the 1993–94 fiscal year that is attributable to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining these amounts, the county auditor shall adjust for the influence of increased assessed valuation within each district, including the effect of jurisdictional changes, and the reductions in property tax allocations required in the 1992–93 fiscal year by Chapters 699 and 1369 of the Statutes of

1992. In the case of a special district that has been consolidated or reorganized, the auditor shall determine the amount of its current property tax allocation that is attributable to the prior district's or districts' receipt of state assistance payments pursuant to Chapter 282 of the Statutes of 1979. Notwithstanding any other provision of this paragraph, for a special district that is governed by a city council or whose governing board has the same membership as a city council and that is a subsidiary district as defined in subdivision (e) of Section 16271 of the Government Code, the county auditor shall multiply the amount that otherwise would be calculated pursuant to this paragraph by 0.38 and the result shall be used in the calculations required by paragraph (5). In no event shall the amount determined by this paragraph be less than zero.

(B) Notwithstanding subparagraph (A), commencing with the 1994–95 fiscal year, in the County of Sacramento, the auditor shall determine the amount for each special district that represents the current amount of its allocations determined pursuant to Section 96, 96.1, 96.5, or 100.6 for the 1994–95 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979.

(4) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district that is engaged in fire protection activities, as reported to the Controller for inclusion in the 1989–90 Edition of the Financial Transactions Report Concerning Special Districts under the heading of "Fire Protection," that is equal to the amount of revenue allocated to that special district from the Special District Augmentation Fund for fire protection activities in the 1992–93 fiscal year. In the case of a special district, other than a special district governed by the county board of supervisors or whose governing body is the same as the county board of supervisors, that is engaged in fire protection activities as reported to the Controller, the county auditor shall also determine the amount by which the district's amount determined pursuant to paragraph (3) exceeds the amount by which its allocation was reduced by operation of former Section 98.6 in the 1992–93 fiscal year. This amount shall be added to the amount otherwise determined for the district under this paragraph. In any county subject to former Section 98.65, 98.66, 98.67, or 98.68 in that same fiscal year, the county auditor shall determine for each special district that is engaged in fire protection activities an amount that is equal to the amount determined for that district pursuant to paragraph (3).

(B) For purposes of this paragraph, a special district includes any special district that is allocated property tax revenue pursuant to this chapter and does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, but is engaged in fire protection activities and appears in the State Controller's Report on Financial Transactions Concerning Counties.

(5) The total amount of property taxes allocated to special districts by the county auditor as a result of paragraph (4) shall be subtracted from the amount of property tax revenues not allocated to special districts by the county auditor as a result of paragraph (3) to determine the amount to be deposited in the Education Revenue Augmentation Fund as specified in subdivision (d).

(6) On or before September 30, 1993, the county auditor shall notify the Director of Finance of the net amount determined for special districts pursuant to paragraph (5).

(d) (1) The amount of property tax revenues not allocated to the county, city and county, cities within the county, and special districts as a result of the reductions required by subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund established in each county or city and county pursuant to Section 97.2. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1992–93 fiscal year.

(2) The county auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to school districts and county offices of education only to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue between the county office of education and school districts within the county. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a school district or county office of education upon that district or county office of education becoming an excess tax school entity. If, after determining the amount to be allocated to each school district and county office of education, the county superintendent of schools determines there are still additional funds to be allocated, the county superintendent of schools shall determine the remainder to be allocated in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per average daily attendance in each remaining school district, and on the basis of the historical split described above for each county office of education, that is not an excess tax school entity until all funds that

would not result in a school district or county office of education becoming an excess tax school entity are allocated. The county superintendent of schools may determine the amounts to be allocated between each school district and county office of education to ensure that all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated.

(3) The county auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to community college districts only to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a community college district upon that district becoming an excess tax school entity.

(4) (A) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2). If, after determining the amount to be allocated to each community college district, the Chancellor of the California Community Colleges determines that there are still additional funds to be allocated, the Chancellor of the California Community Colleges shall determine the remainder to be allocated to each community college district in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per funded full-time equivalent student in each remaining community college district that is not an excess tax school entity until all funds that would not result in a community college district becoming an excess tax school entity are allocated.

(B) (i) For the 1995–96 fiscal year and each fiscal year thereafter, if, after making the allocations pursuant to paragraphs (2) and (3) and subparagraph (A), the auditor determines that there are still additional funds to be allocated, the auditor shall, subject to clauses (ii) and (iii), allocate those excess funds to the county superintendent of schools. Funds allocated pursuant to this subparagraph shall be counted as property tax revenues for special education programs in augmentation of the amount calculated pursuant to Section 2572 of the Education Code, to the extent that those property tax revenues offset state aid for county offices of

education and school districts within the county pursuant to Section 56712 of the Education Code.

(ii) For the 1995–96 fiscal year only, this subparagraph shall have no application to the County of Mono and the amount allocated pursuant to this subparagraph in the County of Marin shall not exceed five million dollars ($5,000,000).

(iii) For the 1996–97 fiscal year only, the total amount of funds allocated by the auditor pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 shall not exceed that portion of two million five hundred thousand dollars ($2,500,000) that corresponds to the county's proportionate share of all moneys allocated pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 for the 1995–96 fiscal year. Upon the request of the auditor, the Department of Finance shall provide to the auditor all information in the department's possession that is necessary for the auditor to comply with this clause.

(C) For purposes of allocating the Educational Revenue Augmentation Fund for the 1996–97 fiscal year, the auditor shall, after making the allocations for special education programs, if any, required by subparagraph (B), allocate all remaining funds among the county, cities, and special districts in proportion to the amounts of ad valorem property tax revenue otherwise required to be shifted from those local agencies to the county's Educational Revenue Augmentation Fund for the relevant fiscal year. For purposes of ad valorem property tax revenue allocations for the 1997–98 fiscal year and each fiscal year thereafter, no amount of ad valorem property tax revenue allocated to the county, a city, or a special district pursuant to this subparagraph shall be deemed to be an amount of ad valorem property tax revenue allocated to that local agency in the prior fiscal year.

(5) For purposes of allocations made pursuant to Section 96.1 for the 1994–95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

SEC. 3.5. Section 97.3 of the Revenue and Taxation Code is amended to read:

97.3. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section, as modified by Section 97.2 or its predecessor section for the 1992–93 fiscal year, shall be modified for the 1993–94 fiscal year pursuant to subdivisions (a) to (c), inclusive, as follows:

(a) The amount of property tax revenue deemed allocated in the prior fiscal year to each county and city and county shall be reduced

by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions for counties and cities and counties determined pursuant to this section shall be one billion nine hundred ninety-eight million dollars ($1,998,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of the reduction for each county or city and county as follows:

(A) The proportionate share of the property tax revenue reduction for each county or city and county that would have been imposed on all counties under the proposal specified in the "May Revision of the 1993–94 Governor's Budget" shall be determined by reference to the document entitled "Estimated County Property Tax Transfers Under Governor's May Revision Proposal," published by the Legislative Analyst's Office on June 1, 1993.

(B) Each county's or city and county's proportionate share of total taxable sales in all counties in the 1991–92 fiscal year shall be determined.

(C) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (A) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(D) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (B) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(E) The Director of Finance shall add the amounts determined pursuant to subparagraphs (C) and (D) for each county and city and county, and divide the resulting figure by two. The amount so determined for each county and city and county shall be divided by a factor of 1.038. The resulting figure shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior fiscal year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee its determination of the amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify the auditor of each county and city and county of the amount of property tax revenue reduction determined for each county and city and county.

(5) Notwithstanding any other provision of this subdivision, the amount of the reduction specified in paragraph (2) for any county or city and county that has first implemented, for the 1993–94 fiscal year, the alternative procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8 shall be reduced, for the 1993–94 fiscal year only, in the amount

of any increased revenue allocated to each qualifying school entity that would not have been allocated for the 1993–94 fiscal year but for the implementation of that alternative procedure. For purposes of this paragraph, "qualifying school entity" means any school district, county office of education, or community college district that is not an excess tax school entity as defined in Section 95.1. Notwithstanding any other provision of this paragraph, the amount of any reduction calculated pursuant to this paragraph for any county or city and county shall not exceed the reduction calculated for that county or city and county pursuant to paragraph (2).

(b) The amount of property tax revenue deemed allocated in the prior fiscal year to each city shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions determined for cities pursuant to this section shall be two hundred eighty-eight million dollars ($288,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of reduction for each city as follows:

(A) The amount of property tax revenue that is estimated to be attributable in the 1993–94 fiscal year to the amount of each city's state assistance payment received by that city pursuant to Chapter 282 of the Statutes of 1979 shall be determined.

(B) A factor for each city equal to the amount determined pursuant to subparagraph (A) for that city, divided by the total of the amounts determined pursuant to subparagraph (A) for all cities, shall be determined.

(C) An amount for each city equal to the factor determined pursuant to subparagraph (B), multiplied by three hundred eighty-two million five hundred thousand dollars ($382,500,000), shall be determined.

(D) In no event shall the amount for any city determined pursuant to subparagraph (C) exceed a per capita amount of nineteen dollars and thirty-one cents ($19.31), as determined in accordance with that city's population on January 1, 1993, as estimated by the Department of Finance.

(E) The amount determined for each city pursuant to subparagraphs (C) and (D) shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee those amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify each county auditor of the amount of property tax revenue reduction determined for each city located within that county.

(c) (1) The amount of property tax revenue deemed allocated in the prior fiscal year to each special district, as defined pursuant to

subdivision (m) of Section 95, shall be reduced by the amount determined for the district pursuant to paragraph (3) and increased by the amount determined for the district pursuant to paragraph (4). The total net amount of these changes is intended to equal two hundred forty-four million dollars ($244,000,000) in the 1993–94 fiscal year.

(2) (A) Notwithstanding any other provision of this subdivision, no reduction shall be made pursuant to this subdivision with respect to any of the following special districts:

(i) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(ii) A water agency that does not sell water at retail, but not including an agency the primary function of which, as determined on the basis of total revenues, is flood control.

(iii) A transit district.

(iv) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(v) A special district that was a multicounty special district as of July 1, 1979.

(B) Notwithstanding any other provision of this subdivision, the first one hundred four thousand dollars ($104,000) of the amount of any reduction that otherwise would be made under this subdivision with respect to a qualifying community services district shall be excluded. For purposes of this subparagraph, a "qualifying community services district" means a community service district that meets all of the following requirements:

(i) Was formed pursuant to Division 3 (commencing with Section 61000) of Title 6 of the Government Code.

(ii) Succeeded to the duties and properties of a police protection district upon the dissolution of that district.

(iii) Currently provides police protection services to substantially the same territory as did that district.

(iv) Is located within a county in which the board of supervisors has requested the Department of Finance that this subparagraph be operative in the county.

(3) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district equal to the amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993–94 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of former Section 98.6 as that section read on June 15, 1993. In those counties that were subject to former Sections 98.66, 98.67, and 98.68, as those sections read on that same date, the county auditor shall determine an amount for each special district that represents the current amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993–94 fiscal year that is attributed to the property tax shift

from schools required by Chapter 282 of the Statutes of 1979. In that county subject to Section 100.4, the county auditor shall determine an amount for each special district that represents the current amount of its allocations determined pursuant to Section 96, 96.1, 96.5, or 100.4 or their predecessor sections for the 1993–94 fiscal year that is attributable to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining these amounts, the county auditor shall adjust for the influence of increased assessed valuation within each district, including the effect of jurisdictional changes, and the reductions in property tax allocations required in the 1992–93 fiscal year by Chapters 699 and 1369 of the Statutes of 1992. In the case of a special district that has been consolidated or reorganized, the auditor shall determine the amount of its current property tax allocation that is attributable to the prior district's or districts' receipt of state assistance payments pursuant to Chapter 282 of the Statutes of 1979. Notwithstanding any other provision of this paragraph, for a special district that is governed by a city council or whose governing board has the same membership as a city council and that is a subsidiary district as defined in subdivision (e) of Section 16271 of the Government Code, the county auditor shall multiply the amount that otherwise would be calculated pursuant to this paragraph by 0.38 and the result shall be used in the calculations required by paragraph (5). In no event shall the amount determined by this paragraph be less than zero.

(B) Notwithstanding subparagraph (A), commencing with the 1994–95 fiscal year, in the County of Sacramento, the auditor shall determine the amount for each special district that represents the current amount of its allocations determined pursuant to Section 96, 96.1, 96.5, or 100.6 for the 1994–95 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979.

(4) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district that is engaged in fire protection activities, as reported to the Controller for inclusion in the 1989–90 Edition of the Financial Transactions Report Concerning Special Districts under the heading of "Fire Protection," that is equal to the amount of revenue allocated to that special district from the Special District Augmentation Fund for fire protection activities in the 1992–93 fiscal year. In the case of a special district, other than a special district governed by the county board of supervisors or whose governing body is the same as the county board of supervisors, that is engaged in fire protection activities as reported to the Controller, the county auditor shall also determine the amount by which the district's amount determined pursuant to paragraph (3) exceeds the amount by which its allocation was reduced by operation of former Section 98.6 in the 1992–93 fiscal year. This amount shall be added to the amount otherwise determined for the district under this paragraph. In any county subject to former Section 98.65, 98.66, 98.67,

or 98.68 in that same fiscal year, the county auditor shall determine for each special district that is engaged in fire protection activities an amount that is equal to the amount determined for that district pursuant to paragraph (3).

(B) For purposes of this paragraph, a special district includes any special district that is allocated property tax revenue pursuant to this chapter and does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, but is engaged in fire protection activities and appears in the State Controller's Report on Financial Transactions Concerning Counties.

(5) The total amount of property taxes allocated to special districts by the county auditor as a result of paragraph (4) shall be subtracted from the amount of property tax revenues not allocated to special districts by the county auditor as a result of paragraph (3) to determine the amount to be deposited in the Education Revenue Augmentation Fund as specified in subdivision (d).

(6) On or before September 30, 1993, the county auditor shall notify the Director of Finance of the net amount determined for special districts pursuant to paragraph (5).

(d) (1) The amount of property tax revenues not allocated to the county, city and county, cities within the county, and special districts as a result of the reductions required by subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund established in each county or city and county pursuant to Section 97.2. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1992–93 fiscal year.

(2) The county auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to school districts and county offices of education only to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue between the county office of education and school districts within the county. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a school district or county office of education upon that district or county office of

education becoming an excess tax school entity. If, after determining the amount to be allocated to each school district and county office of education, the county superintendent of schools determines there are still additional funds to be allocated, the county superintendent of schools shall determine the remainder to be allocated in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per average daily attendance in each remaining school district, and on the basis of the historical split described above for each county office of education, that is not an excess tax school entity until all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated. The county superintendent of schools may determine the amounts to be allocated between each school district and county office of education to ensure that all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated.

(3) The county auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to community college districts only to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a community college district upon that district becoming an excess tax school entity.

(4) (A) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2). If, after determining the amount to be allocated to each community college district, the Chancellor of the California Community Colleges determines that there are still additional funds to be allocated, the Chancellor of the California Community Colleges shall determine the remainder to be allocated to each community college district in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per funded full-time equivalent student in each remaining community college district that is not an excess tax school entity until all funds that would not result in a community college district becoming an excess tax school entity are allocated.

(B) (i) For the 1995–96 and 1996–97 fiscal years only, if, after making the allocations pursuant to paragraphs (2) and (3) and subparagraph (A), the auditor determines that there are still additional funds to be allocated, the auditor shall, subject to clauses (ii) and (iii), allocate those excess funds to the county superintendent of schools. Funds allocated pursuant to this subparagraph shall be counted as property tax revenues for special education programs in augmentation of the amount calculated pursuant to Section 2572 of the Education Code, to the extent that those property tax revenues offset state aid for county offices of education and school districts within the county pursuant to Section 56712 of the Education Code.

(ii) For the 1995–96 fiscal year only, this subparagraph shall have no application to the County of Mono and the amount allocated pursuant to this subparagraph in the County of Marin shall not exceed five million dollars ($5,000,000).

(iii) For the 1996–97 fiscal year only, the total amount of funds allocated by the auditor pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 shall not exceed that portion of two million five hundred thousand dollars ($2,500,000) that corresponds to the county's proportionate share of all moneys allocated pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 for the 1995–96 fiscal year. Upon the request of the auditor, the Department of Finance shall provide to the auditor all information in the department's possession that is necessary for the auditor to comply with this clause.

(C) For purposes of allocating the Educational Revenue Augmentation Fund for the 1996–97 fiscal year and each fiscal year thereafter, the auditor shall, after making the allocations for special education programs, if any, required by subparagraph (B), allocate all remaining funds among the county, cities, and special districts in proportion to the amounts of ad valorem property tax revenue otherwise required to be shifted from those local agencies to the county's Educational Revenue Augmentation Fund for the relevant fiscal year. For purposes of ad valorem property tax revenue allocations for the 1997–98 fiscal year and each fiscal year thereafter, no amount of ad valorem property tax revenue allocated to the county, a city, or a special district pursuant to this subparagraph shall be deemed to be an amount of ad valorem property tax revenue allocated to that local agency in the prior fiscal year.

(5) For purposes of allocations made pursuant to Section 96.1 for the 1994–95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 97.2 of the Revenue and Taxation Code proposed by both this bill and AB 2797. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section 97.2 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2797, in which case Section 2 of this bill shall not become operative.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 97.3 of the Revenue and Taxation Code proposed by both this bill and AB 2797. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section 97.3 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2797, 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 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.

CHAPTER 1112

An act to amend Sections 753 and 3373 of the Financial Code, relating to banks.

[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 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 superintendent 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 superintendent may by regulation make that provision of federal law applicable to banks organized under the laws of this state.

(2) If the superintendent 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 superintendent under Chapter 13.5 (commencing with Section 1700), the superintendent 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 superintendent 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 superintendent 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 superintendent 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 becomes effective.

(5) Any regulation adopted pursuant to subdivision (b) shall be subject to the following restrictions:

(A) The superintendent shall not renew or reinstate the regulation adopted pursuant to subdivision (b).

(B) The superintendent 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 superintendent 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. 1.5. 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 becomes 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. 2. 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 superintendent 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 superintendent 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 superintendent complies with all 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. 2.5. 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. 3. Section 1.5 of this bill incorporates amendments to Section 753 of the Financial 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 753 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 753 of the Financial Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 1.5 of this bill shall become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 3373 of the Financial 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 3373 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 3373 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 2.5 of this bill shall become operative.

CHAPTER 1113

An act to add Section 1363.05 to the Health and Safety Code, and to amend Section 10194.7 of the Insurance Code, relating to health insurance.

[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 1363.05 is added to the Health and Safety Code, to read:

1363.05. (a) For every plan contract that provides or supplements Medicare benefits, a plan shall include within its disclosure form the following statement in at least 12-point type:

"For additional information concerning covered benefits, contact the Health Insurance Counseling and Advocacy Program (HICAP) or your agent. HICAP provides health insurance counseling for California senior citizens. Call the HICAP toll-free telephone number, 1-800-434-0222, for a referral to your local HICAP office. HICAP is a service provided free of charge by the State of California."

(b) For every plan contract that provides or supplements Medicare benefits, a plan shall modify its disclosure forms to comply with subdivision (a) no later than January 1, 1998.

(c) Every health care service plan that provides or supplements Medicare benefits shall notify those current enrollees who enrolled prior to the modification of disclosure forms to include the disclosure statement required by subdivision (a) of the availability of the HICAP program. That notification shall include the same language as is required by subdivision (a). That notification may be by free standing document and shall be made no later than January 1, 1998.

SEC. 2. Section 10194.7 of the Insurance Code is amended to read:

10194.7. (a) (1) Every Medicare supplement policy and certificate shall contain, on the first page, the applicable provision or provisions on renewability, continuation and conversion, appropriately captioned. This disclosure shall include any reservation by the insurer of the right to change premium and any automatic renewal premium increases based on the insured's age.

(2) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured, exercises a specially reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits; all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement insurance policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) If a Medicare supplement policy contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(4) Every Medicare supplement policy and certificate shall prominently disclose, in no less than 10-point upper case type, on the first page of the policy, certificate, and the outline of coverage, that the applicant has the right to return the policy or certificate, via regular mail, within 30 days after receiving it, if the insured is not satisfied for any reason, and that the full premium will be refunded.

(b) (1) (A) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every insurer providing Medicare supplement insurance to a resident of California shall notify its insureds of modifications it has made to

Medicare supplement forms in a format acceptable to the commissioner.

The notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the policy, and inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(B) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(C) The notices shall not contain or be accompanied by any solicitation.

(2) Insurers issuing disability policies, certificates, or contracts that provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person eligible for Medicare by reason of age, shall provide to all applicants a Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioner and the Health Care Financing Administration. Delivery of the buyer's guide shall be made whether or not the policies, certificates, or contracts are advertised, solicited, or issued as Medicare supplement policies. Except in the case of direct response insurers, delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgement of receipt of the buyer's guide shall be obtained by the insurer. Direct response insurers shall deliver the buyer's guide to the applicant upon request, but not later than at the time the policy is delivered.

(3) Any disability insurance policy, including a disability income policy, a basic, catastrophic or major medical expense policy, or single premium nonrenewal policy or certificate issued to persons eligible for Medicare by reasons of age, that is not a Medicare supplement policy or a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.) shall notify insureds under the policy that it is not a Medicare supplement policy. The notice shall either be printed or attached to the first page of the outline of coverage. The notice shall be in no less than 12-point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CERTIFICATE]. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

(c) (1) Insurers issuing Medicare supplement policies or certificates for delivery in California shall provide an outline of coverage to all applicants at the time of presentation for examination or sale as provided in Section 10605, and in no case later than at the time the application is made. Except for direct response policies,

insurers shall obtain a written acknowledgement of receipt of the outline from the applicant.

Any advertisement that is not a presentation for examination or sale as defined in subdivision (e) of Section 10601 shall contain a notice in no less than 10-point upper case type that an outline of coverage is available upon request. The insurer or agent that receives any request for an outline of coverage shall provide an outline of coverage to the person making the request within 14 days of receipt of the request.

(2) If an outline of coverage is provided at or before the time of application and the Medicare supplement policy or certificate is issued on a basis that would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12-point type, immediately above the name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage shall be in the language and format prescribed in this subdivision in no less than 12-point type, and shall include the following items in the order prescribed below. Titles, as set forth below in paragraphs (B) through (H), shall be capitalized, centered and printed in boldface type. The outline of coverage shall include the items, and in the same order, specified in the chart set forth in paragraph (4) of subdivision (C) of Section 16 of the Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted by the National Association of Insurance Commissioners on July 30, 1991.

(A) The cover page shall contain the 10-plan (A through J) chart. The plans offered by the insurer shall be clearly identified. Innovative benefits shall be explained in a manner approved by the commissioner. The text shall read:

"Medicare supplement insurance can be sold in only 10 standard plans. This chart shows the benefits included in each plan. Every insurance company must offer Plan A. Some plans may not be available.

The BASIC BENEFITS included in ALL plans are:

Hospitalization: Medicare Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical expenses: Medicare Part B coinsurance (usually 20 percent of the Medicare approved amount).

Blood: First three pints of blood each year.

Mammogram: One annual screening to the extent not covered by Medicare.

Cervical cancer test: One annual screening."

[Reference to the mammogram and cervical cancer test shall not be included so long as California is required to disallow them for Medicare beneficiaries by the Health Care Financing Administration or other agent of the federal government under 42 U.S.C. Sec. 1395ss.]

(B) PREMIUM INFORMATION. Premium information for plans that are offered by the insurer shall be shown on, or immediately following, the cover page and shall be clearly and prominently displayed. The premium and mode shall be stated for all offered plans. All possible premiums for the prospective applicant shall be illustrated in writing. If the premium is based on the increasing age of the insured, information specifying when and how premiums will change shall be clearly illustrated in writing. The text shall state: "We [the insurer's name] can only raise your premium if we raise the premium for all policies like yours in California."

(C) The text shall state: "Use this outline to compare benefits and premiums among policies."

(D) READ YOUR POLICY VERY CAREFULLY. The text shall state: "This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company."

(E) THIRTY-DAY RIGHT TO RETURN THIS POLICY. The text shall state: "If you find that you are not satisfied with your policy, you may return it to [insert the insurer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it has never been issued and return all of your payments."

(F) POLICY REPLACEMENT. The text shall read: "If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it."

(G) DISCLOSURES. The text shall read: "This policy may not fully cover all of your medical costs." "Neither this company nor any of its agents are connected with Medicare." "This outline of coverage does not give all the details of Medicare coverage. Contact your local social security office or consult 'The Medicare Handbook' for more details." "For additional information concerning policy benefits, contact the Health Insurance Counseling and Advocacy Program (HICAP) or your agent. Call the HICAP toll-free telephone number, 1-800-434-0222, for a referral to your local HICAP office. HICAP is a service provided free of charge by the State of California."

The disclosure required by this paragraph, as revised by amendments made during the 1996 portion of the 1995–96 Regular Session, shall be included in the required disclosure form no later than January 1, 1998.

(H) [For policies that are not guaranteed issue] COMPLETE ANSWERS ARE IMPORTANT. The text shall read: "When you fill

out the application for a new policy, to be sure to answer truthfully and completely all questions about your medical and health history. The company may have the right to cancel your policy and refuse to pay any claims if you leave out or falsify important medical information.

Review the application carefully before you sign it. Be certain that all information has been properly recorded."

(I) An example showing a physician's charge, which is equal to or less than the allowable limiting charge for the current year, of two thousand dollars ($2,000), the amount that Medicare would approve, the amount that Medicare would pay, the amount that the policy or certificate would pay, and any amount that would be owed by the insured, assuming that the annual deductible has already been paid. The statement shall be prominently displayed and in type no smaller than other type on the page.

(J) One chart for each benefit plan offered by the insurer showing the services, Medicare payments, payments under the policy and payments expected from the insured; using the same uniform format and language. No more than four plans may be shown on one page. Include an explanation of any innovative benefits in a manner approved by the commissioner.

SEC. 2.5. Section 10194.7 of the Insurance Code is amended to read:

10194.7. (a) (1) Every Medicare supplement policy and certificate shall contain, on the first page, the applicable provision or provisions on renewability, continuation and conversion, appropriately captioned. This disclosure shall include any reservation by the insurer of the right to change premium and any automatic renewal premium increases based on the insured's age.

(2) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured, exercises a specially reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits; all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement insurance policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) If a Medicare supplement policy contains any limitations with respect to preexisting conditions, the limitations shall appear as a

separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(4) Every Medicare supplement policy and certificate shall prominently disclose, in no less than 10-point upper case type, on the first page of the policy, certificate, and the outline of coverage, that the applicant has the right to return the policy or certificate, via regular mail, within 30 days after receiving it, if the insured is not satisfied for any reason, and that the full premium will be refunded.

(b) (1) (A) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every insurer providing Medicare supplement insurance to a resident of California shall notify its insureds of modifications it has made to Medicare supplement forms in a format acceptable to the commissioner.

The notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the policy, and inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(B) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(C) The notices shall not contain or be accompanied by any solicitation.

(2) Insurers issuing disability policies, certificates, or contracts that provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person eligible for Medicare by reason of age, shall provide to all applicants a Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioner and the Health Care Financing Administration. Delivery of the buyer's guide shall be made whether or not the policies, certificates, or contracts are advertised, solicited, or issued as Medicare supplement policies. Except in the case of direct response insurers, delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgement of receipt of the buyer's guide shall be obtained by the insurer. Direct response insurers shall deliver the buyer's guide to the applicant upon request, but not later than at the time the policy is delivered.

(3) Any disability insurance policy, including a disability income policy, a basic, catastrophic or major medical expense policy, or single premium nonrenewal policy or certificate issued to persons eligible for Medicare , that is not a Medicare supplement policy or a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.), or other policy identified in subdivision (b) of Section 10192.05, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy. The notice shall

either be printed or attached to the first page of the outline of coverage. The notice shall be in no less than 12-point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CERTIFICATE]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(c) (1) Insurers issuing Medicare supplement policies or certificates for delivery in California shall provide an outline of coverage to all applicants at the time of presentation for examination or sale as provided in Section 10605, and in no case later than at the time the application is made. Except for direct response policies, insurers shall obtain a written acknowledgement of receipt of the outline from the applicant.

Any advertisement that is not a presentation for examination or sale as defined in subdivision (e) of Section 10601 shall contain a notice in no less than 10-point upper case type that an outline of coverage is available upon request. The insurer or agent that receives any request for an outline of coverage shall provide an outline of coverage to the person making the request within 14 days of receipt of the request.

(2) If an outline of coverage is provided at or before the time of application and the Medicare supplement policy or certificate is issued on a basis that would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12-point type, immediately above the name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage shall be in the language and format prescribed in this subdivision in no less than 12-point type, and shall include the following items in the order prescribed below. Titles, as set forth below in paragraphs (B) through (H), shall be capitalized, centered and printed in boldface type. The outline of coverage shall include the items, and in the same order, specified in the chart set forth in paragraph (4) of subdivision (C) of Section 16 of the Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted by the National Association of Insurance Commissioners on July 30, 1991.

(A) The cover page shall contain the 10-plan (A through J) chart. The plans offered by the insurer shall be clearly identified. Innovative benefits shall be explained in a manner approved by the

commissioner. The text shall read:

"Medicare supplement insurance can be sold in only 10 standard plans. This chart shows the benefits included in each plan. Every insurance company must offer Plan A. Some plans may not be available.

The BASIC BENEFITS included in ALL plans are:

Hospitalization: Medicare Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical expenses: Medicare Part B coinsurance (usually 20 percent of the Medicare approved amount).

Blood: First three pints of blood each year.

Mammogram: One annual screening to the extent not covered by Medicare.

Cervical cancer test: One annual screening."

[Reference to the mammogram and cervical cancer test shall not be included so long as California is required to disallow them for Medicare beneficiaries by the Health Care Financing Administration or other agent of the federal government under 42 U.S.C. Sec. 1395ss.]

(B) PREMIUM INFORMATION. Premium information for plans that are offered by the insurer shall be shown on, or immediately following, the cover page and shall be clearly and prominently displayed. The premium and mode shall be stated for all offered plans. All possible premiums for the prospective applicant shall be illustrated in writing. If the premium is based on the increasing age of the insured, information specifying when and how premiums will change shall be clearly illustrated in writing. The text shall state: "We [the insurer's name] can only raise your premium if we raise the premium for all policies like yours in California."

(C) The text shall state: "Use this outline to compare benefits and premiums among policies."

(D) READ YOUR POLICY VERY CAREFULLY. The text shall state: "This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company."

(E) THIRTY-DAY RIGHT TO RETURN THIS POLICY. The text shall state: "If you find that you are not satisfied with your policy, you may return it to [insert the insurer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it has never been issued and return all of your payments."

(F) POLICY REPLACEMENT. The text shall read: "If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it."

(G) DISCLOSURES. The text shall read: "This policy may not fully cover all of your medical costs." "Neither this company nor any

of its agents are connected with Medicare." "This outline of coverage does not give all the details of Medicare coverage. Contact your local social security office or consult "The Medicare Handbook" for more details." "For additional information concerning policy benefits, contact the Health Insurance Counseling and Advocacy Program (HICAP) or your agent. Call the HICAP toll-free telephone number, 1-800-434-0222, for a referral to your local HICAP office. HICAP is a service provided free of charge by the State of California."

The disclosure required by this paragraph, as revised by amendments made during the 1996 portion of the 1995–96 Regular Session, shall be included in the required disclosure form no later than January 1, 1998.

(H) [For policies that are not guaranteed issue] COMPLETE ANSWERS ARE IMPORTANT. The text shall read: "When you fill out the application for a new policy, to be sure to answer truthfully and completely all questions about your medical and health history. The company may have the right to cancel your policy and refuse to pay any claims if you leave out or falsify important medical information.

Review the application carefully before you sign it. Be certain that all information has been properly recorded."

(I) An example showing a physician's charge, which is equal to or less than the allowable limiting charge for the current year, of two thousand dollars ($2,000), the amount that Medicare would approve, the amount that Medicare would pay, the amount that the policy or certificate would pay, and any amount that would be owed by the insured, assuming that the annual deductible has already been paid. The statement shall be prominently displayed and in type no smaller than other type on the page.

(J) One chart for each benefit plan offered by the insurer showing the services, Medicare payments, payments under the policy and payments expected from the insured; using the same uniform format and language. No more than four plans may be shown on one page. Include an explanation of any innovative benefits in a manner approved by the commissioner.

SEC. 2.7. Section 2.5 of this bill incorporates amendments to Section 10194.7 of the Insurance Code proposed by both this bill and SB 2043. 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 10194.7 of the Insurance Code, and (3) this bill is enacted after SB 2043, in which case Section 10194.7 of the Insurance Code as amended by SB 2043, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

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 1114

An act to add Section 14087.47 to the Welfare and Institutions Code, relating to public social services.

[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 14087.47 is added to the Welfare and Institutions Code, to read:

14087.47. (a) The department may contract under this article with the Counties of Sonoma, Placer, and San Luis Obispo, which have been selected by the department through a request for proposal process, for the operation of a fee-for-service managed care program administered by the county through which primary care, specialty care, and case management are provided to residents of the county who are Medi-Cal eligible persons designated by the director.

(b) (1) Upon receipt of the necessary federal medicaid freedom of choice waivers, the department may, consistent with the federal waivers, assign to a fee-for-service managed care program residents of the county who are Medi-Cal eligible persons with Medi-Cal aid codes designated by the director. The department may require that assigned beneficiaries receive their Medi-Cal services and case management through the program.

(2) Medi-Cal eligible county residents who are dually eligible for Medi-Cal and Medicare benefits shall not, however, be assigned to a fee-for-service managed care program.

(3) Medi-Cal beneficiaries eligible for benefits through age, blindness, or disability, as defined in Title XVI of the Social Security Act (42 U.S.C. Sec. 1381 et. seq.) shall be assigned to a fee-for-service managed care program. However, each county participating in the program authorized by this section shall allow these beneficiaries to select a provider or providers of their choice and shall ensure that existing provider-patient relationships are permitted to continue.

(4) Services covered by the California Children's Services program shall not be incorporated into a fee-for-service managed care program in a manner that is inconsistent with Article 2.98 (commencing with Section 14094).

(5) A foster child may be enrolled voluntarily in a fee-for-service managed care program if the county director of social services, or his or her delegated representative, makes an individual determination that enrollment in a fee-for-service managed care program is in the best interest of the child. In determining what is in the best interest of the foster child, the county director of social services, or his or her delegated representative, shall consult with the child's caretaker, and shall include the decision of whether or not to enroll the child in a fee-for-service managed care program in the child's case plan provided for pursuant to subdivision (b) of Section 11400.

(c) Each contract entered into by the department under this section may have an initial term of up to three years. Contracts may be renewed for periods of up to three years upon a determination by the department that a contract is successful.

(d) The department shall periodically evaluate each fee-for-service managed care program through an independent assessment as required under the department's approved federal waiver request to determine if the program is successfully providing quality health care while not placing the Medi-Cal program or counties at additional financial risk. The assessment shall evaluate quality of care, access, the provision of preventive health care, and costs. The department shall terminate a contract when the department finds that the fee-for-service managed care program is unsuccessful.

(e) In order to ensure maximum cost-effectiveness, the Legislature hereby determines that an expedited contract process for contracts entered into under this section between the department and the counties is necessary. Therefore, contracts under this article shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. Contracts shall have no force or effect unless approved by the Department of Finance.

(f) Fee-for-service managed care program contractors shall ensure broad participation of primary care and other providers, including specialists, safety net and traditional Medi-Cal providers, in the program and shall contract with any primary care provider that agrees to provide services in accord with the same terms and conditions that the fee-for-service managed care program contractor requires of other primary care providers. To the extent possible, the fee-for-service managed care program contractor shall contract with primary care providers in a manner that minimizes the disruption of existing relationships between Medi-Cal eligible residents and their primary care providers.

(g) Medi-Cal eligible county residents in the aid codes designated by the director shall be informed about the fee-for-service managed care program through the health care options process established by the department in each county in which the program is operated consistent with the health care options process authorized in other Medi-Cal managed care counties designated by the director.

(h) Designated Medi-Cal residents shall have the right to select a primary care provider from among the primary care providers contracting with the fee-for-service managed care program contractor and to change primary care providers. Covered Medi-Cal residents shall be informed of this right and the selection and change processes through the health care options process established in the county by the department consistent with the health care options process authorized in other Medi-Cal managed care counties designated by the director. The fee-for-service managed care program contractor shall also include this information in its membership materials.

(i) The board of supervisors of each county participating in the project authorized by this section shall establish or cause to be established an advisory committee comprised of county, physician, hospital, clinic, and beneficiary representatives to advise the county on the implementation and operation of the project provided for under this section.

(j) The department may adopt regulations to implement this section 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 any emergency regulations implementing this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Initial emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 120 days.

CHAPTER 1115

An act to amend Sections 1190 and 1191 of the Harbors and Navigation Code, relating to pilotage, 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 1190 of the Harbors and Navigation Code is amended to read:

1190. (a) Every vessel spoken inward or outward bound shall pay the following rate of bar pilotage through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, and Suisun:

(1) Seven dollars and thirty-five cents ($7.35) per draft foot of the vessel's deepest draft and fractions of a foot pro rata, and an additional charge of 64.88 mills per high gross registered ton as changed by the quarterly mill rate adjustment made pursuant to law for October 1, 1996, and in effect on December 31, 1996.

(A) At the direction of the board, this additional charge of 64.88 mills, as changed by the quarterly mill rate adjustment made for October 1, 1996, and in effect on December 31, 1996, may be adjusted higher or lower by an incremental amount that is proportionate to the last audited annual average net income per pilot for each pilot licensed by the board above or below 60 pilots.

(B) In addition to the rate change specified in subparagraph (A), the additional charge of 64.88 mills per high gross registered ton may be adjusted at the direction of the board if, after a hearing conducted pursuant to Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, the board determines that there has been a catastrophic cost increase to the pilots that would result in at least a 2-percent increase in the overall annual cost of providing pilot services.

(2) A minimum charge for bar pilotage shall be six hundred dollars ($600) for each vessel piloted.

(3) The vessel's deepest draft shall be the maximum draft attained, on a stillwater basis, at any part of the vessel during the course of such transit inward or outward.

(b) The rate specified in subdivision (a) shall apply only to a pilotage that passes through the Golden Gate to or from the high seas to or from a berth within an area bounded by the Southern Pacific Bridge to the north and Hunter's Point to the south. The rate for pilotage to or from the high seas to or from a point past the Southern Pacific Bridge or Hunter's Point shall include a movement fee in addition to the basic bar pilotage rate as specified by the board pursuant to Section 1191.

(c) The rate established in paragraph (1) of subdivision (a) shall be for a trip from the high seas to dock or from the dock to high seas. The rate specified in Section 1191 shall not be charged by pilots for docking and undocking vessels. This subdivision does not apply to the rates charged by inland pilots for their services.

(d) The board shall determine the number of pilots to be licensed based on the 1986 manpower study adopted by the board.

(e) Consistent with the board's June 1996 adoption of rate recommendations, the rates imposed pursuant to this section that are in effect on December 31, 1996, shall be increased by 4 percent on January 1, 1997; those in effect on December 31, 1997, shall be increased by 3 percent on January 1, 1998; and those in effect on December 31, 1998, shall be increased by 3 percent on January 1, 1999.

SEC. 2. Section 1191 of the Harbors and Navigation Code is amended to read:

1191. (a) The board, pursuant to Chapter 6 (commencing with Section 1200), shall recommend that the Legislature, by statute, adopt a schedule of pilotage rates providing fair and reasonable return to pilots and inland pilots engaged in ship movements or special operations where rates for those movements or operations are not specified in Section 1190.

(b) Every vessel using pilots and inland pilots for ship movements or special operations that do not constitute bar pilotage shall pay the rate specified in the schedule of pilotage rates adopted by the Legislature.

(c) The minimum rates charged by pilots or inland pilots for ship movements and internal operations shall be the schedule of ship pilot fees recommended for adoption by the board in June 1996, and published by the San Francisco Bar Pilots.

(d) Consistent with the board's June 1996, adoption of rate recommendations, the rates imposed pursuant to this section that are in effect on December 31, 1996, shall be increased by 4 percent on January 1, 1997; those in effect on December 31, 1997, shall be increased by 3 percent on January 1, 1998; and those in effect on December 31, 1998, shall be increased by 3 percent on January 1, 1999.

CHAPTER 1116

An act to add Sections 1128.1 and 1735.1 to the Unemployment Insurance Code, relating to unemployment compensation.

[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 1128.1 is added to the Unemployment Insurance Code, to read:

1128.1. (a) If the director finds that an individual or business entity has exchanged money on behalf of an employer and the employer used the cash proceeds from the exchange to conceal the payment of wages with an intent to evade any provision of this code, the director shall assess a penalty against the individual or business entity in an amount equal to 100 percent of any assessed contributions that were based on the concealed wages. An employing unit subject to a penalty under Section 1128 shall not be assessed a penalty under this section for the same violation.

(b) For purposes of this section, "business entity" means a partnership, corporation, association, or limited liability company.

(c) The penalty shall apply only when there is evidence that the individual or business entity who exchanged money knew that the employer intended to use the cash proceeds from the exchange to conceal the payment of wages and thereby avoid the payment of contributions or taxes required by this code.

SEC. 2. Section 1735.1 is added to the Unemployment Insurance Code, to read:

1735.1. (a) An individual who has been assessed under the provisions of Section 1128.1, or any officer, major stockholder, or other person having charge of the affairs of a business entity that has been assessed under the provisions of that section, shall be personally liable for the amount of contributions, withholdings, penalties, and interest due and unpaid by the employer, other than those under subdivisions (a) and (b) of Section 1128, for whom money was exchanged as described in Section 1128.1. The director may assess that person for the amount of contributions, withholdings, all penalties other than those under Section 1128, and interest. The provisions of Article 8 (commencing with Section 1126) and Article 9 (commencing with Section 1176) of Chapter 4 of Part 1 shall apply to assessments made pursuant to this section. Sections 1221, 1222, 1223, and 1224 shall apply to assessments made pursuant to this section. With respect to that person, the director shall have all the collection remedies set forth in this chapter.

(b) For purposes of this section, "business entity" means a partnership, corporation, association, or limited liability company.

CHAPTER 1117

An act to add and repeal Section 1393.5 of the Labor Code, relating to employment.

[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 1393.5 is added to the Labor Code, to read:

1393.5. (a) Notwithstanding any other provision of this article or Article 2 (commencing with Section 49110) of Chapter 7 of Part 27 of the Education Code, an exemption issued pursuant to Section 1393 may authorize the employment of a minor, who is enrolled in any public or private school in the County of Lake, for more than 48 hours but not more than 60 hours in any one week only upon prior written approval by the Lake County Board of Education.

(b) 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. 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 Constitution because of the unique nature of the agricultural industry in the County of Lake.

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 1118

An act to amend Sections 1358, 1358.3, 1358.5, 1358.8, 1358.11, 1358.20, and 1373.621 of the Health and Safety Code, to amend Sections 10116.5, 10194.7, 10194.8, 10195.1, 10197, 10197.1, and 10197.6 of the Insurance Code, and to amend Section 2800.2 of the Labor Code, relating to health care coverage 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. Section 1358 of the Health and Safety Code is amended to read:

1358. Every health care service plan that offers any contract that primarily or solely supplements Medicare, or is advertised or represented as a supplement to Medicare, shall, in addition to complying with this chapter and rules of the commissioner, comply with this article. This article shall not apply to a contract or other arrangement of a health care service plan that offers benefits under Section 1395mm of Title 42 of the United States Code or under a demonstration project authorized pursuant to amendments to the federal Social Security Act. This article shall not apply to a contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a

combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

As used in this chapter, "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, Title 1, Part 1 of Public Law 89-97, enacted by the 89th United States Congress; as then constituted or as later amended.

SEC. 2. Section 1358.3 of the Health and Safety Code is amended to read:

1358.3. (a) In the interest of full and fair disclosure, and to assure the availability of necessary consumer information to potential subscribers or enrollees not possessing a special knowledge of Medicare, health care service plans, and Medicare supplement contracts, a health care service plan offering contracts to supplement Medicare shall comply with the provisions of this section.

(b) The application form for persons eligible for Medicare used by a plan described in subdivision (a) shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or contract in force or whether a Medicare supplement contract is intended to replace any accident and sickness policy or certificate or plan contract presently in force. A supplementary application or other form to be signed by the applicant and solicitor, containing the questions and statements may be used.

[Statements]

(1) You do not need more than one Medicare supplement policy or contract.

(2) If you purchase this contract, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under Medi-Cal or medicaid and may not need a Medicare supplement policy or contract.

(4) The benefits and premiums under your Medicare supplement contract can be suspended, if requested, during your entitlement to benefits under Medi-Cal or medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medi-Cal or medicaid. If you are no longer entitled to Medi-Cal or medicaid, your contract will be reinstituted if requested within 90 days of losing Medi-Cal or medicaid eligibility.

(5) Counseling services may be available in your area to provide advice concerning your purchase of Medicare supplement coverage and concerning medical assistance through the Medi-Cal or medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB). Information regarding counseling services may be obtained from the State Department of Aging.

[Questions]

To the best of your knowledge:

(1) Do you have another Medicare supplement insurance policy or health care service plan contract in force?

(A) If so, with which company?

(B) If so, do you intend to replace your current Medicare supplement policy or contract with this contract?

(2) Do you have any other health coverage that provides benefits similar to this Medicare supplement contract?

(A) If so, with which company?

(B) What kind of coverage?

(3) Are you covered by Medi-Cal or medicaid?

(A) As a specified Low-Income Medicare Beneficiary (SLMB)?

(B) As a Qualified Medicare Beneficiary (QMB)?

(C) For other Medi-Cal or medicaid benefits?

(c) Solicitors shall list any other health insurance policies or plan contracts they have sold to the applicant. The list shall include a list of policies and plan contracts sold that are still in force, and a list of policies and plan contracts sold in the past five years that are no longer in force.

(d) Plans issuing Medicare supplement contracts without a solicitor or solicitor firm shall return to the applicant, upon delivery of the contract, a copy of the application or supplemental form, signed by the applicant and acknowledged by the plan.

(e) Upon determining that a sale will involve replacement of Medicare supplement coverage, a plan described in subdivision (a), other than a plan selling as a result of direct response solicitation, as described below, or its agent shall furnish the applicant, prior to issuance or delivery of the Medicare supplement contract, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the plan. However, a plan described in subdivision (a) that is selling as a result of direct response solicitation, that is, solicitation through the news media or the mail shall deliver to the applicant at the time of issuance of the contract a notice regarding replacement of Medicare supplement coverage. The notice required by this subdivision shall be provided in substantially the form set forth in subdivision (f).

(f) The notice required by this subdivision shall be provided in substantially the following form in no less than 10-point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT COVERAGE

(Company name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate an existing Medicare supplement policy or plan contract and replace it with a contract to be issued by [Plan Name]. Your plan contract to be issued by [Plan Name] will provide 30 days within which you may decide without cost whether you desire to keep the contract. You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. Terminate your present policy or plan contract only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.

STATEMENT TO APPLICANT BY PLAN, SOLICITOR, SOLICITOR FIRM, OR OTHER REPRESENTATIVE:

(1) I have reviewed your current medical or health coverage. The replacement of coverage involved in this transaction does not duplicate coverage, to the best of my knowledge. The replacement contract is being purchased for the following reason (check one):
____ Additional benefits.
____ No change in benefits, but lower premiums.
____ Fewer benefits and lower premiums.
____ Other. (please specify) _____

(2) You may not be immediately eligible for full coverage under the new contract. This could result in denial or delay of a claim for benefits under the new contract, whereas a similar claim might have been payable under your present policy or contract.

(3) State law provides that your replacement Medicare supplement contract may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. The plan will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new coverage for similar benefits to the extent that time was spent (depleted) under the original contract.

(4) If you still wish to terminate your present policy or contract and replace it with new coverage, be certain to truthfully and completely answer any and all questions on the application concerning your medical and health history. Failure to include all material medical information on an application requesting that information may provide a basis for the plan to deny any future

claims and to refund your prepaid or periodic payment as though your contract had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded.

(5) Do not cancel your present Medicare supplement coverage until you have received your new contract and are sure you want to keep it.

(Signature of Solicitor, Solicitor Firm, or Other Representative)
[Typed Name and Address of Plan, Solicitor, or Solicitor Firm]

(Applicant's Signature)

(Date)

(g) Notwithstanding the provisions of this section, a plan shall not be required to comply with the provisions of this section with respect to any group contract that is any of the following:

(1) A group contract with one or more employers or labor organizations, or trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees or combination thereof, or for members or former members, or combination thereof, of the labor organizations.

(2) A group contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation, has been maintained in good faith for purposes other than obtaining health coverage, and has been in existence for at least two years prior to the date of its initial offering of the contract to its members.

SEC. 3. Section 1358.5 of the Health and Safety Code is amended to read:

1358.5. (a) A health care service plan offering contracts to supplement Medicare shall do all of the following:

(1) Establish marketing procedures to assure that any comparison of Medicare supplement coverage by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive coverage is not sold or issued.

(3) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and plan contract the following: "Notice to buyer: This plan contract may not cover all of your medical expenses."

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement coverage already has accident and sickness coverage and the types and amounts of any such coverage.

(5) Establish auditable procedures for verifying compliance with this subdivision.

(b) The following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any accident and sickness coverage for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any coverage or to take out coverage with another plan or contract.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of coverage through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of coverage.

(3) Cold-lead advertising. Making use directly or indirectly of any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of Medicare supplement coverage and that contact will be made by a health care service plan or its representative.

(c) In recommending the purchase or replacement of any Medicare supplement coverage a plan or its representative shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(d) Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy certificate or contract is prohibited.

SEC. 4. Section 1358.8 of the Health and Safety Code is amended to read:

1358.8. (a) A health care service plan offering contracts to supplement Medicare may provide commission or other compensation to a solicitor or solicitor firm for the sale of a Medicare supplement contract only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the contract in the second year or period.

(b) The commission or other compensation provided in subsequent renewal years shall be the same as that provided in the second year or period, and shall be provided for at least five years.

(c) If coverage is replaced, no plan shall provide compensation to a solicitor or solicitor firm, and no solicitor or solicitor firm shall receive compensation, in a greater amount than the renewal compensation for the replaced coverage.

(d) For purposes of this section, "commission" or "compensation" includes pecuniary or nonpecuniary remuneration of any kind

relating to the sale or renewal of the contract, including, but not limited to, bonuses, gifts, prizes, awards, and finder's fees.

SEC. 5. Section 1358.11 of the Health and Safety Code is amended to read:

1358.11. (a) No plan subject to this article may advertise, solicit for, enter, or renew any plan contract that primarily or solely supplements Medicare, or is advertised or represented as a supplement to Medicare, with hospital or medical coverage unless the contract returns to the subscribers and enrollees in the form of aggregate benefits under the contract, not including anticipated refunds or credits, as estimated for the entire period for which prepaid or periodic charges are computed to provide coverage, on the basis of incurred claims or costs of health care services experience and earned prepaid or periodic charges for that period and in accordance with accepted actuarial principles and practices:

(1) At least 75 percent of the aggregate amount of prepaid or periodic charges collected in the case of group contracts.

(2) At least 65 percent of the aggregate amount of prepaid or periodic charges collected in the case of individual contracts.

(b) The calculation of actual or expected loss ratios shall be pursuant to that formula, definitions, procedures, and other provisions as may be deemed by the commissioner, with due consideration of the circumstances of the particular plan, to be fair, reasonable, and consistent with the objectives of this chapter. These loss ratios shall also apply to prestandardized plan contracts and certificates issued prior to July 21, 1992, the date mandated for standardized Medicare supplement coverage by the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508).

(c) Each plan subject to subdivision (a) shall submit to the department a copy of the calculations for the actual or expected loss ratio as required by Section 1358.9. The calculations shall include the following data: the actual loss ratio for the entire period in which the plan contract has been in force, as well as for the immediate past three years and for each year in which the plan contract has been in force; the scale of prepaid or periodic charges for the loss ratio calculation period, a description of all assumptions, the formula used to calculate gross prepaid or periodic charges, the expected level of earned prepaid or periodic charges in the loss ratio calculation period, and the expected level of incurred claims for reimbursement, including paid claims and incurred but not paid claims, in the loss ratio calculation period. The calculations shall be accompanied by an actuarial certification, consisting of a signed declaration of an actuary who is a member in good standing of the American Academy of Actuaries in which the actuary states that the assumptions used in calculating the expected loss ratio are appropriate and reasonable, taking into account that the calculations are in accordance with the provisions of subdivision (b) and the provisions referred to therein. In addition, the commissioner may require the plan to submit

actuarial certification, as described above, by one or more unaffiliated actuaries acceptable to the commissioner.

(d) Notwithstanding the calculations required by subdivision (c), plan contracts shall be deemed to comply with the loss ratio standards if, and shall be deemed not to comply with the loss standards unless: (1) for the most recent year, the ratio of the incurred losses to earned prepaid charges for contracts that have been in force for three years or more is greater than or equal to the applicable percentages contained in this section; and (2) the expected losses in relation to premiums over the entire period for which the contract is rated comply with the requirements of this section. An expected third-year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for contracts in force less than three years.

(e) Notwithstanding the provisions of this section, this section shall not apply to any group contract that is either:

(1) A group contract with one or more employers or labor organizations, or trustees of a fund established by one or more employers or organizations, or combination thereof, for employees or former employees or combination thereof or for members or former members, or combination thereof, of the labor organizations.

(2) A group contract with any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association is composed of individuals all of whom are actively engaged in the same profession, trade or occupation, has been maintained in good faith for purposes other than obtaining health coverage, and has been in existence for at least two years prior to the date of its initial offering of the contract to its members.

(f) For contracts issued prior to July 21, 1992, expected claims in relation to premiums shall meet all of the following:

(1) The originally filed anticipated loss ratio when combined with the actual experience since July 21, 1992.

(2) The appropriate percentage from paragraphs (1) and (2) of subdivision (a) when combined with actual expenses on or after the effective date of this act.

(3) The appropriate percentage from paragraphs (1) and (2) of subdivision (a) over the entire future period for which rates are computed to provide coverage on or after the effective date of this act.

SEC. 6. Section 1358.20 of the Health and Safety Code is amended to read:

1358.20. (a) No plan shall deny or condition the offering or effectiveness of any Medicare supplement contract, nor discriminate in the pricing of the contract, because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for that contract that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both 65 years of

age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement contract currently available from a plan shall be made available to all applicants who qualify under this section. This section shall not be construed as preventing the exclusion of benefits under a contract, during the first six months, based on a preexisting condition for which the subscriber or enrollee received treatment or was otherwise diagnosed during the six months before it became effective.

(b) (1) In determining whether an exclusion of benefits for a preexisting condition may be applied to any person during the open enrollment period provided in this section for Medicare supplement coverage, a plan shall credit the time the person was covered under qualifying prior coverage, provided the individual becomes eligible for coverage under the Medicare supplement plan:

(A) Within 180 days of the termination of any qualifying prior coverage if the qualifying prior coverage is offered through employment or sponsored by an employer and if the Medicare supplement insurance is offered through succeeding employment or sponsored by a succeeding employer, and is not in violation of the Medicare Secondary Payer provision of Section 1862(b) of the Social Security Act (42 U.S.C. Sec. 1395y(b)).

(B) In cases not covered by paragraph (1), within 30 days of the termination of any other qualifying prior coverage.

(2) For purposes of this section, qualifying prior coverage means any of the following:

(A) Any individual or group policy, contract, or program that is written or administered by a disability insurer, 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. The term includes continuation or conversion coverage but does not include accident only, credit, disability income, long-term care insurance, dental coverage, vision coverage, 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) The medicaid program pursuant to Title XIX of the Social Security Act.

(C) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care, not including the federal Medicare program pursuant to Title XVIII of the Social Security Act.

(c) An individual enrolled in Medicare Part B by reason of disability shall be entitled to open enrollment described in this section for six months after he or she reaches age 65. Sales during the

open enrollment period shall not be discouraged by any means, including the altering of the commission structure.

(d) An individual who is 65 years of age or older and enrolled in Medicare Part B is entitled to open enrollment described in this section for six months following:

(1) Receipt of a notice of termination or, if no notice is received, the effective date of termination, from any employer-sponsored health plan including an employer-sponsored retiree health plan. For purposes of this section, "employer-sponsored retiree health plan" includes any coverage for medical expenses that is directly or indirectly sponsored or established by an employer for employees or retirees, their spouses, dependents, or other included insureds.

(2) Termination of health care services for a military retiree or the retiree's Medicare eligible spouse or dependent as a result of a military base closure.

(e) An individual who is 65 years of age or older and enrolled in Medicare Part B is entitled to open enrollment described in this section if the individual was covered under a policy, certificate, or contract providing Medicare supplement coverage but that coverage terminated because the individual established residence at a location not served by the plan.

(f) An individual shall be entitled to an annual open enrollment period lasting 30 days or more, commencing with the individual's birthday, during which time that person may purchase any Medicare supplement coverage, with the exception of a Medicare Select policy, that offers benefits equal to or lesser than those provided by the previous coverage. During this open enrollment period, no plan that offers contracts to supplement Medicare that falls under this provision shall deny or condition the issuance or effectiveness of Medicare supplement coverage, nor discriminate in the pricing of coverage, because of health status, claims experience, receipt of health care, or medical condition of the individual if, at the time of the open enrollment period, the individual is covered under another Medicare supplement policy or contract. A plan that offers contracts to supplement Medicare shall notify a policyholder of his or her rights under this subdivision at least 30 and no more than 60 days before the beginning of the open enrollment period.

SEC. 7. Section 1373.621 of the Health and Safety Code is amended to read:

1373.621. (a) Except for a specialized health care service plan, every health care service plan contract that is issued, amended, delivered, or renewed in this state on or after January 1, 1996, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan for an employer subject to COBRA, as defined herein, including a carrier providing replacement coverage under Section 1399.63, shall further offer the former employee the opportunity to continue benefits as required under subdivision (b), and shall further offer the former spouse of an

employee or former employee the opportunity to continue benefits as required under subdivision (c).

(b) (1) In the event a former employee who worked for the employer for at least five years prior to the date of termination of employment and who is 60 years of age or older on the date employment ends is entitled to and so elects to continue benefits under COBRA for himself or herself and for any spouse, the employee or spouse may further continue benefits beyond the date coverage under COBRA ends, as set forth in paragraph (2). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA had remained in force. For the employee or spouse, continuation coverage following the end of COBRA is subject to payment of premiums to the health care service plan. Individuals ineligible for COBRA are not entitled to continuation coverage under this section. Premiums for continuation coverage under this section shall be billed by, and remitted to, the health care service plan in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the plan's group subscriber agreement with the former employer.

(2) The former employer shall notify the former employee or spouse or both, or the former spouse of the employee or former employee, of the availability of the continuation benefits under this section in accordance with Section 2800.2 of the Labor Code. To continue health care coverage pursuant to this section, the individual shall elect to do so by notifying the plan in writing within 30 calendar days prior to the date continuation coverage under COBRA is scheduled to end.

(3) The continuation coverage shall end automatically on the earlier of (A) the date the individual reaches age 65, (B) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) for a spouse, five years from the date on which continuation coverage under COBRA was scheduled to end for the spouse, or (E) the date on which the former employer terminates its group subscriber agreement with the health care service plan and ceases to provide coverage for any active employees through that plan, in which case the health care service plan shall notify the former employee or spouse or both of the right to a conversion plan in accordance with Section 1373.6.

(c) (1) If a former spouse of an employee or former employee was covered as a qualified beneficiary under COBRA, the former spouse may further continue benefits beyond the date coverage under COBRA ends, as set forth in paragraph (2) of subdivision (b). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the

continuation coverage under COBRA had remained in force. Continuation coverage following the end of COBRA is subject to payment of premiums to the health care service plan. Premiums for continuation coverage under this section shall be billed by, and remitted to, the health care service plan in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the plan's group subscriber agreement with the employer or former employer.

(2) The continuation coverage for the former spouse shall end automatically on the earlier of (A) the date the individual reaches 65 years of age, (B) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) five years from the date on which continuation coverage under COBRA was scheduled to end for the former spouse, or (E) the date on which the employer or former employer terminates its group subscriber agreement with the health care service plan and ceases to provide coverage for any active employees through that plan, in which case the health care service plan shall notify the former spouse of the right to a conversion plan in accordance with Section 1373.6.

(d) (1) If the premium charged to the employer for a specific employee is adjusted for the age of the specific employee on other than a composite basis, the rate for continuation coverage under this section shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former employee electing continuation coverage. If the coverage continued is that of a former spouse, the premium charged shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former spouse selecting continuation coverage.

(2) If the premium charged to the employer for a specific employee is not adjusted for age of the specific employee, then the rate for continuation coverage under this section shall not exceed 213 percent of the applicable current group rate. For purposes of this section, the "applicable current group rate" means the total premiums charged by the health care service plan for coverage for the group, divided by the relevant number of covered persons. However, in computing the premiums charged to the specific employer group, the health care service plan shall not include consideration of the specific medical care expenditures for beneficiaries receiving continuation coverage pursuant to this section.

(e) For purposes of this section, "COBRA" means Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, and Section 300bb of Title 42 of the United

States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as amended.

(f) For the purposes of this section, "former spouse" means either an individual who is divorced from an employee or former employee or an individual who was married to an employee or former employee at the time of the death of the employee or former employee.

SEC. 8. Section 10116.5 of the Insurance Code is amended to read:

10116.5. (a) Every policy of disability insurance that is issued, amended, delivered, or renewed in this state on or after January 1, 1996, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan for an employer subject to COBRA, as defined herein, including a carrier providing replacement coverage under Section 10128.3, shall further offer the former employee the opportunity to continue benefits as required under subdivision (b), and shall further offer the former spouse of an employee or former employee the opportunity to continue benefits as required under subdivision (c).

(b) (1) In the event a former employee who worked for the employer for at least five years prior to the date of termination of employment and who is 60 years of age or older on the date employment ends is entitled to and so elects to continue benefits under COBRA for himself or herself and for any spouse, the employee or spouse may further continue benefits beyond the date coverage under COBRA ends, as set forth in paragraph (2). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA had remained in force. For the employee or spouse, continuation coverage following the end of COBRA is subject to payment of premiums to the insurer. Individuals ineligible for COBRA are not entitled to continuation coverage under this section. Premiums for continuation coverage under this section shall be billed by, and remitted to, the insurer in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the insurer's group contract with the former employer.

(2) The former employer shall notify the former employee or spouse or both, or the former spouse of the employee or former employee, of the availability of the continuation benefits under this section in accordance with Section 2800.2 of the Labor Code. To continue health care coverage pursuant to this section, the individual shall elect to do so by notifying the insurer in writing within 30 calendar days prior to the date continuation coverage under COBRA is scheduled to end.

(3) The continuation coverage shall end automatically on the earlier of (A) the date the individual reaches age 65, (B) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable,

(C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) for a spouse, five years from the date on which continuation coverage under COBRA was scheduled to end for the spouse, or (E) the date on which the former employer terminates its group contract with the insurer and ceases to provide coverage for any active employees through that insurer, in which case the insurer shall notify the former employee or spouse or both of the right to a conversion policy.

(c) (1) If a former spouse of an employee or former employee was covered as a qualified beneficiary under COBRA, the former spouse may further continue benefits beyond the date coverage under COBRA ends, as set forth in paragraph (2) of subdivision (b). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA had remained in force. Continuation coverage following the end of COBRA is subject to payment of premiums to the insurer. Premiums for continuation coverage under this section shall be billed by, and remitted to, the insurer in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the insurer's group contract with the employer or former employer.

(2) The continuation coverage for the former spouse shall end automatically on the earlier of (A) the date the individual reaches 65 years of age, (B) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) five years from the date on which continuation coverage under COBRA was scheduled to end for the former spouse, or (E) the date on which the employer or former employer terminates its group contract with the insurer and ceases to provide coverage for any active employees through that insurer, in which case the insurer shall notify the former spouse of the right to a conversion policy.

(d) (1) If the premium charged to the employer for a specific employee is adjusted for the age of the specific employee on other than a composite basis, the rate for continuation coverage under this section shall not exceed 102 percent of the premium charged by the insurer to the employer for an employee of the same age as the former employee electing continuation coverage. If the coverage continued is that of a former spouse, the premium charged shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former spouse selecting continuation coverage.

(2) If the premium charged to the employer for a specific employee is not adjusted for age of the specific employee, then the rate for continuation coverage under this section shall not exceed 213 percent of the applicable current group rate. For purposes of this

section, the "applicable current group rate" means the total premiums charged by the insurer for coverage for the group, divided by the relevant number of covered persons. However, in computing the premiums charged to the specific employer group, the insurer shall not include consideration of the specific medical care expenditures for beneficiaries receiving continuation coverage pursuant to this section.

(e) For purposes of this section, "COBRA" means Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, and Section 300bb of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as amended.

(f) For the purposes of this section, "former spouse" means either an individual who is divorced from an employee or former employee or an individual who was married to an employee or former employee at the time of the death of the employee or former employee.

SEC. 9. Section 10194.7 of the Insurance Code is amended to read:

10194.7. (a) (1) Every Medicare supplement policy and certificate shall contain, on the first page, the applicable provision or provisions on renewability, continuation and conversion, appropriately captioned. This disclosure shall include any reservation by the insurer of the right to change premium and any automatic renewal premium increases based on the insured's age.

(2) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured, exercises a specially reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits; all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement insurance policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) If a Medicare supplement policy contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(4) Every Medicare supplement policy and certificate shall prominently disclose, in no less than 10-point upper case type, on the first page of the policy, certificate, and the outline of coverage, that the applicant has the right to return the policy or certificate, via

regular mail, within 30 days after receiving it, if the insured is not satisfied for any reason, and that the full premium will be refunded.

(b) (1) (A) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every insurer providing Medicare supplement insurance to a resident of California shall notify its insureds of modifications it has made to Medicare supplement forms in a format acceptable to the commissioner.

The notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the policy, and inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(B) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(C) The notices shall not contain or be accompanied by any solicitation.

(2) Insurers issuing disability policies, certificates, or contracts that provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person eligible for Medicare by reason of age, shall provide to all applicants a Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioner and the Health Care Financing Administration. Delivery of the buyer's guide shall be made whether or not the policies, certificates, or contracts are advertised, solicited, or issued as Medicare supplement policies. Except in the case of direct response insurers, delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgement of receipt of the buyer's guide shall be obtained by the insurer. Direct response insurers shall deliver the buyer's guide to the applicant upon request, but not later than at the time the policy is delivered.

(3) Any disability insurance policy, including a disability income policy, a basic, catastrophic or major medical expense policy, or single premium nonrenewal policy or certificate issued to persons eligible for Medicare, that is not a Medicare supplement policy or a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.), or other policy identified in subdivision (b) of Section 10192.05, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy. The notice shall either be printed or attached to the first page of the outline of coverage. The notice shall be in no less than 12-point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CERTIFICATE]. If you are eligible for

Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(c) (1) Insurers issuing Medicare supplement policies or certificates for delivery in California shall provide an outline of coverage to all applicants at the time of presentation for examination or sale as provided in Section 10605, and in no case later than at the time the application is made. Except for direct response policies, insurers shall obtain a written acknowledgement of receipt of the outline from the applicant.

Any advertisement that is not a presentation for examination or sale as defined in subdivision (e) of Section 10601 shall contain a notice in no less than 10-point upper case type that an outline of coverage is available upon request. The insurer or agent that receives any request for an outline of coverage shall provide an outline of coverage to the person making the request within 14 days of receipt of the request.

(2) If an outline of coverage is provided at or before the time of application and the Medicare supplement policy or certificate is issued on a basis that would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12-point type, immediately above the name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage shall be in the language and format prescribed in this subdivision in no less than 12-point type, and shall include the following items in the order prescribed below. Titles, as set forth below in paragraphs (B) through (H), shall be capitalized, centered and printed in boldface type. The outline of coverage shall include the items, and in the same order, specified in the chart set forth in paragraph (4) of subdivision (C) of Section 16 of the Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted by the National Association of Insurance Commissioners on July 30, 1991.

(A) The cover page shall contain the 10-plan (A through J) chart. The plans offered by the insurer shall be clearly identified. Innovative benefits shall be explained in a manner approved by the commissioner. The text shall read:

"Medicare supplement insurance can be sold in only 10 standard plans. This chart shows the benefits included in each plan. Every insurance company must offer Plan A. Some plans may not be available.

The BASIC BENEFITS included in ALL plans are:

Hospitalization: Medicare Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical expenses: Medicare Part B coinsurance (usually 20 percent of the Medicare approved amount).

Blood: First three pints of blood each year.

Mammogram: One annual screening to the extent not covered by Medicare.

Cervical cancer test: One annual screening."

[Reference to the mammogram and cervical cancer test shall not be included so long as California is required to disallow them for Medicare beneficiaries by the Health Care Financing Administration or other agent of the federal government under 42 U.S.C. Sec. 1395ss.]

(B) PREMIUM INFORMATION. Premium information for plans that are offered by the insurer shall be shown on, or immediately following, the cover page and shall be clearly and prominently displayed. The premium and mode shall be stated for all offered plans. All possible premiums for the prospective applicant shall be illustrated in writing. If the premium is based on the increasing age of the insured, information specifying when and how premiums will change shall be clearly illustrated in writing. The text shall state: "We [the insurer's name] can only raise your premium if we raise the premium for all policies like yours in California."

(C) The text shall state: "Use this outline to compare benefits and premiums among policies."

(D) READ YOUR POLICY VERY CAREFULLY. The text shall state: "This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company."

(E) THIRTY-DAY RIGHT TO RETURN THIS POLICY. The text shall state: "If you find that you are not satisfied with your policy, you may return it to [insert the insurer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it has never been issued and return all of your payments."

(F) POLICY REPLACEMENT. The text shall read: "If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it."

(G) DISCLOSURES. The text shall read: "This policy may not fully cover all of your medical costs." "Neither this company nor any of its agents are connected with Medicare." "This outline of coverage does not give all the details of Medicare coverage. Contact your local social security office or consult "The Medicare Handbook" for more details." "If you want to discuss buying Medicare supplement insurance with a trained insurance counselor, call the California Department of Insurance's toll-free number 1-800-927-HELP and ask

how to contact your local Health Insurance and Counseling Program (HICAP) office. HICAP is a service provided free of charge by the State of California."

(H) [For policies that are not guaranteed issue] COMPLETE ANSWERS ARE IMPORTANT. The text shall read: "When you fill out the application for a new policy, to be sure to answer truthfully and completely all questions about your medical and health history. The company may have the right to cancel your policy and refuse to pay any claims if you leave out or falsify important medical information.

Review the application carefully before you sign it. Be certain that all information has been properly recorded."

(I) An example showing a physician's charge, which is equal to or less than the allowable limiting charge for the current year, of two thousand dollars ($2,000), the amount that Medicare would approve, the amount that Medicare would pay, the amount that the policy or certificate would pay, and any amount that would be owed by the insured, assuming that the annual deductible has already been paid. The statement shall be prominently displayed and in type no smaller than other type on the page.

(J) One chart for each benefit plan offered by the insurer showing the services, Medicare payments, payments under the policy and payments expected from the insured; using the same uniform format and language. No more than four plans may be shown on one page. Include an explanation of any innovative benefits in a manner approved by the commissioner.

SEC. 9.5. Section 10194.7 of the Insurance Code is amended to read:

10194.7. (a) (1) Every Medicare supplement policy and certificate shall contain, on the first page, the applicable provision or provisions on renewability, continuation and conversion, appropriately captioned. This disclosure shall include any reservation by the insurer of the right to change premium and any automatic renewal premium increases based on the insured's age.

(2) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured, exercises a specially reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits; all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement insurance policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits

provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) If a Medicare supplement policy contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(4) Every Medicare supplement policy and certificate shall prominently disclose, in no less than 10-point upper case type, on the first page of the policy, certificate, and the outline of coverage, that the applicant has the right to return the policy or certificate, via regular mail, within 30 days after receiving it, if the insured is not satisfied for any reason, and that the full premium will be refunded.

(b) (1) (A) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every insurer providing Medicare supplement insurance to a resident of California shall notify its insureds of modifications it has made to Medicare supplement forms in a format acceptable to the commissioner.

The notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the policy, and inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(B) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(C) The notices shall not contain or be accompanied by any solicitation.

(2) Insurers issuing disability policies, certificates, or contracts that provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person eligible for Medicare by reason of age, shall provide to all applicants a Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioner and the Health Care Financing Administration. Delivery of the buyer's guide shall be made whether or not the policies, certificates, or contracts are advertised, solicited, or issued as Medicare supplement policies. Except in the case of direct response insurers, delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgement of receipt of the buyer's guide shall be obtained by the insurer. Direct response insurers shall deliver the buyer's guide to the applicant upon request, but not later than at the time the policy is delivered.

(3) Any disability insurance policy, including a disability income policy, a basic, catastrophic or major medical expense policy, or single premium nonrenewal policy or certificate issued to persons eligible for Medicare, that is not a Medicare supplement policy or a policy issued pursuant to a contract under Section 1876 of the federal Social

Security Act (42 U.S.C. Sec. 1395 et seq.), or other policy identified in subdivision (b) of Section 10192.05, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy. The notice shall either be printed or attached to the first page of the outline of coverage. The notice shall be in no less than 12-point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CERTIFICATE]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(c) (1) Insurers issuing Medicare supplement policies or certificates for delivery in California shall provide an outline of coverage to all applicants at the time of presentation for examination or sale as provided in Section 10605, and in no case later than at the time the application is made. Except for direct response policies, insurers shall obtain a written acknowledgement of receipt of the outline from the applicant.

Any advertisement that is not a presentation for examination or sale as defined in subdivision (e) of Section 10601 shall contain a notice in no less than 10-point upper case type that an outline of coverage is available upon request. The insurer or agent that receives any request for an outline of coverage shall provide an outline of coverage to the person making the request within 14 days of receipt of the request.

(2) If an outline of coverage is provided at or before the time of application and the Medicare supplement policy or certificate is issued on a basis that would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12-point type, immediately above the name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage shall be in the language and format prescribed in this subdivision in no less than 12-point type, and shall include the following items in the order prescribed below. Titles, as set forth below in paragraphs (B) through (H), shall be capitalized, centered and printed in boldface type. The outline of coverage shall include the items, and in the same order, specified in the chart set forth in paragraph (4) of subdivision (C) of Section 16 of the Model Regulation to implement the NAIC Medicare Supplement Insurance

Minimum Standards Model Act, as adopted by the National Association of Insurance Commissioners on July 30, 1991.

(A) The cover page shall contain the 10-plan (A through J) chart. The plans offered by the insurer shall be clearly identified. Innovative benefits shall be explained in a manner approved by the commissioner. The text shall read:

"Medicare supplement insurance can be sold in only 10 standard plans. This chart shows the benefits included in each plan. Every insurance company must offer Plan A. Some plans may not be available.

The BASIC BENEFITS included in ALL plans are:

Hospitalization: Medicare Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical expenses: Medicare Part B coinsurance (usually 20 percent of the Medicare approved amount).

Blood: First three pints of blood each year.

Mammogram: One annual screening to the extent not covered by Medicare.

Cervical cancer test: One annual screening."

[Reference to the mammogram and cervical cancer test shall not be included so long as California is required to disallow them for Medicare beneficiaries by the Health Care Financing Administration or other agent of the federal government under 42 U.S.C. Sec. 1395ss.]

(B) PREMIUM INFORMATION. Premium information for plans that are offered by the insurer shall be shown on, or immediately following, the cover page and shall be clearly and prominently displayed. The premium and mode shall be stated for all offered plans. All possible premiums for the prospective applicant shall be illustrated in writing. If the premium is based on the increasing age of the insured, information specifying when and how premiums will change shall be clearly illustrated in writing. The text shall state: "We [the insurer's name] can only raise your premium if we raise the premium for all policies like yours in California."

(C) The text shall state: "Use this outline to compare benefits and premiums among policies."

(D) READ YOUR POLICY VERY CAREFULLY. The text shall state: "This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company."

(E) THIRTY-DAY RIGHT TO RETURN THIS POLICY. The text shall state: "If you find that you are not satisfied with your policy, you may return it to [insert the insurer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it has never been issued and return all of your payments."

(F) POLICY REPLACEMENT. The text shall read: "If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it."

(G) DISCLOSURES. The text shall read: "This policy may not fully cover all of your medical costs." "Neither this company nor any of its agents are connected with Medicare." "This outline of coverage does not give all the details of Medicare coverage. Contact your local social security office or consult "The Medicare Handbook" for more details." "For additional information concerning policy benefits, contact the Health Insurance Counseling and Advocacy Program (HICAP) or your agent. Call the HICAP toll-free telephone number, 1-800-434-0222, for a referral to your local HICAP office. HICAP is a service provided free of charge by the State of California."

The disclosure required by this paragraph, as revised by amendments made during the 1996 portion of the 1995–96 Regular Session, shall be included in the required disclosure form no later than January 1, 1998.

(H) [For policies that are not guaranteed issue] COMPLETE ANSWERS ARE IMPORTANT. The text shall read: "When you fill out the application for a new policy, to be sure to answer truthfully and completely all questions about your medical and health history. The company may have the right to cancel your policy and refuse to pay any claims if you leave out or falsify important medical information.

Review the application carefully before you sign it. Be certain that all information has been properly recorded."

(I) An example showing a physician's charge, which is equal to or less than the allowable limiting charge for the current year, of two thousand dollars ($2,000), the amount that Medicare would approve, the amount that Medicare would pay, the amount that the policy or certificate would pay, and any amount that would be owed by the insured, assuming that the annual deductible has already been paid. The statement shall be prominently displayed and in type no smaller than other type on the page.

(J) One chart for each benefit plan offered by the insurer showing the services, Medicare payments, payments under the policy and payments expected from the insured; using the same uniform format and language. No more than four plans may be shown on one page. Include an explanation of any innovative benefits in a manner approved by the commissioner.

SEC. 10. Section 10194.8 of the Insurance Code is amended to read:

10194.8. (a) No Medicare supplement insurer shall deny or condition the issuance or effectiveness of Medicare supplement coverage, nor discriminate in the pricing of coverage, because of health status, claims experience, receipt of health care or medical condition of an applicant in the case of an application for a policy or

certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. This section shall not be construed as preventing the exclusion of benefits for preexisting conditions as defined in paragraph (1) of subdivision (a) of Section 10195, except as provided for in paragraph (1) of subdivision (b).

(b) (1) In determining whether an exclusion of benefits for a preexisting condition may be applied to any person during the open enrollment period provided in this section, a Medicare supplement insurer shall credit the time the person was covered under qualifying prior coverage, provided the individual becomes eligible for coverage under the Medicare supplement policy:

(A) Within 180 days of the termination of any qualifying prior coverage if the qualifying prior coverage is offered through employment or sponsored by an employer and if the Medicare supplement insurance is offered through succeeding employment or sponsored by a succeeding employer, and is not in violation of the Medicare Secondary Payer provision of Section 1862(b) of the Social Security Act (42 U.S.C. Sec. 1395y(b)).

(B) In cases not covered by paragraph (1), within 30 days of the termination of any other qualifying prior coverage.

(2) For purposes of this section, qualifying prior coverage means any of the following:

(A) 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. The term includes continuation or conversion coverage but does not include accident only, credit, disability income, long-term care insurance, dental coverage, vision coverage, 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) The medicaid program pursuant to Title XIX of the Social Security Act.

(C) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care, not including the federal Medicare program pursuant to Title XVIII of the Social Security Act.

(c) An individual enrolled in Medicare Part B by reason of disability will be entitled to open enrollment described in this section for six months after he or she reaches age 65. Every insurer shall make available to every applicant qualified for open enrollment all policies

and certificates offered by that insurer at the time of application. Insurers shall not discourage sales during the open enrollment period by any means, including the altering of the commission structure.

(d) An individual who is 65 years of age or older and enrolled in Medicare Part B is entitled to open enrollment described in this section for six months following:

(1) Receipt of a notice of termination or, if no notice is received, the effective date of termination, from any employer-sponsored health plan including an employer-sponsored retiree health plan. For purposes of this section, "employer-sponsored retiree health plan" includes any coverage for medical expenses that is directly or indirectly sponsored or established by an employer for employees or retirees, their spouses, dependents, or other included insureds.

(2) Termination of health care services for a military retiree or the retiree's Medicare eligible spouse or dependent as a result of a military base closure.

(e) An individual who is 65 years of age or older and enrolled in Medicare Part B is entitled to open enrollment described in this section if the individual was covered under a policy, certificate, or contract providing Medicare supplement coverage but that coverage terminated because the individual established residence at a location not served by the plan.

(f) An individual shall be entitled to an annual open enrollment period lasting 30 days or more, commencing with the individual's birthday, during which time that person may purchase any Medicare supplement coverage, with the exception of a Medicare Select policy, that offers benefits equal to or lesser than those provided by the previous coverage. During this open enrollment period, no Medicare supplement insurer that falls under this provision shall deny or condition the issuance or effectiveness of Medicare supplement coverage, nor discriminate in the pricing of coverage, because of health status, claims experience, receipt of health care, or medical condition of the individual if, at the time of the open enrollment period, the individual is covered under another Medicare supplement policy or contract. A Medicare supplement insurer shall notify a policyholder of his or her rights under this subdivision at least 30 and no more than 60 days before the beginning of the open enrollment period.

SEC. 11. Section 10195.1 of the Insurance Code, as added by Section 21 of Chapter 287 of the Statutes of 1992, is amended to read:

10195.1. (a) A Medicare supplement policy or certificate form shall not be issued or renewed unless the form can be expected to return to the insured aggregate benefits, not including anticipated refunds or credits, of at least 75 percent of the aggregate amount of premiums earned in the case of group policies, or at least 65 percent of the aggregate amount of premiums earned in the case of individual policies. These loss ratios shall also apply to prestandardized policies and certificates issued prior to July 21, 1992.

(1) Loss ratio experience shall be calculated as incurred claims for each calendar year, by year of issue, excluding administrative expenses or policy reserves, divided by premiums earned from all payment modes, including policy fees.

(2) The minimum loss ratio in this subdivision shall apply to all forms that have been in force three years or more. In the case of forms that have been in force less than three years, the commissioner shall determine whether the expected third-year loss ratio will meet the appropriate minimum standard.

(b) (1) Every insurer of Medicare supplement insurance shall file annually, for each form in force in California, its rates, rating schedule, and supporting documentation. The filings shall include an actuarial memorandum describing the historical experience and expected costs relative to any premium changes, premium income, rates or rating schedules, claims reports, including claims lag reports, and other documentation as prescribed or requested by the commissioner. The filings shall demonstrate that unpaid claims reserves and renewal rate filings are based on acceptable actuarial principles that will result in the required minimum loss ratio standards over the renewal period.

(2) The combined filings shall include appropriate riders, endorsements, and outlines of coverage, and shall be submitted prior to the effective date of changes, or announcement that no changes will occur, in Medicare benefits, and shall clearly describe the revised policy benefits.

(3) An insurer shall not use or change premium rates unless the rates, rating schedule, and supporting documentation have been approved by the commissioner in writing.

(4) If a rate filing or other information received by the commissioner indicates that a loss ratio fails to meet the minimum standard established in this section, the commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the appropriate loss ratio. The commissioner may require the insurer to file and implement a corrective plan, which may include premium adjustments, dividends, benefit increases, refunds, premium credits, or any combination of methods reasonably calculated to achieve the minimum loss ratio. The corrective plan shall be approved by the commissioner before implementation.

(5) If the commissioner determines that a failure to meet the minimum loss ratio requirements is due to unusual experience fluctuations, economic conditions, or other nonrecurring conditions, the commissioner may exempt the form from the need for a corrective plan for that year. Any exemption shall be in writing and specify the reasons for granting the exemption.

(6) If an insurer fails to file or implement the corrective plan in paragraph (4) in a timely manner, the commissioner shall withdraw approval of the form as provided in Section 10293. This remedy shall

be in addition to any other remedy available under law. Any plan, report, exemption, or other document prepared pursuant to this subdivision shall be accessible as a public record.

(7) For policies issued prior to July 21, 1992, expected claims in relation to premiums shall meet:

(A) The originally filed anticipated loss ratio when combined with the actual experience since inception.

(B) The appropriate loss ratio requirement from subdivision (a), when combined with actual experience beginning with the effective date of this act.

(C) The appropriate loss ratio requirement from subdivision (a), over the entire future period for which those rates are computed to provide coverage.

(D) In meeting the requirements in subparagraphs (A), (B), and (C) for filings for policies issued prior to July 21, 1992, and for purposes of attaining credibility, an insurer may combine experience under policy forms if the policy forms have a common loss ratio requirement and provide substantially similar coverage. The commissioner may disapprove the combining of experience if combining the forms appear not to be in the best interest of the policyholder. Once a combined form is adopted, the insurer may not separate the experience except with the approval of the commissioner.

(c) (1) An insurer shall collect and file for approval by the commissioner, by May 31 of each year, the data contained in the reporting form set forth in Appendix A of the Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted by the National Association of Insurance Commissioners on July 30, 1991.

(2) If on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since exception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in the standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) A refund or credit shall be made when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level.

(4) A refund or credit shall be made on or before September 30 in the year following the year upon which the refund or credit is based. The refund or credit shall include interest from the end of the calendar year to the date of the refund at a rate no less than the average for 13-week Treasury notes.

(d) The commissioner shall adopt regulations by July 30, 1993, that shall set forth specific data and documentation required for submission in annual rate filings pursuant to subdivisions (a), (b),

and (c), and specify those minimum standards necessary for approval of those rate filings.

(e) The commissioner may conduct a public hearing to gather information concerning a request for a rate increase on any form in force in California if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance may be made without consideration of any corrective plan implemented for the reporting period. Public notice of the hearing shall be furnished as deemed appropriate by the commissioner.

(f) Mass-marketed policies, as defined in paragraph (1) of subdivision (c) of Section 10293, issued prior to the effective date of this section shall be subject to the individual loss ratio specified in subdivision (a).

SEC. 12. Section 10197 of the Insurance Code is amended to read:

10197. (a) No insurer, broker, agent, or other person shall cause an insured to replace a Medicare supplement insurance policy unnecessarily. In recommending replacement of any Medicare supplement insurance, an agent shall make reasonable efforts to determine the appropriateness to the potential insured.

(b) Application forms shall include the following statements and questions designed to elicit information as to whether, as of the date of the application, the applicant has other Medicare supplement insurance in force, or whether the Medicare supplement policy or certificate is intended to replace any other disability coverage presently in force. A supplementary application or other form to be signed by the applicant and agent containing those questions may be used unless the coverage is sold without an agent.

(1) Statements:

(A) You do not need more than one Medicare supplement policy.

(B) You may be eligible for benefits under Medi-Cal or medicaid and may not need a Medicare supplement policy.

(C) Benefits and premiums under your Medicare supplement policy will be suspended during your entitlement to Medi-Cal or medicaid for up to 24 months. You must request this suspension within 90 days of becoming eligible for Medi-Cal or medicaid. Once you are no longer eligible for Medi-Cal or medicaid, your insurance policy will be reinstituted if you request it within 90 days after losing entitlement.

(D) "If you want to discuss buying Medicare supplement insurance with a trained insurance counselor, call the California Department of Insurance's toll-free number 1-800-927-HELP and ask how to contact your local Health Insurance Counseling and Advocacy Program (HICAP) office. HICAP is a service provided free of charge by the State of California."

(2) Questions:

(A) Do you have any other Medicare supplement insurance coverage, including an HMO contract? If so, with what company?

(B) Do you have any other health or disability insurance coverage? If so, what company? What kind of policy? Would the benefits duplicate the benefits in this Medicare supplement policy?

(C) Do you intend to replace any health or disability insurance coverage with this policy?

(D) Are you eligible for or receiving benefits from Medi-Cal?

(c) Each agent shall list, on the same form, any other disability insurance policies he or she or his or her agency has sold to the applicant. The list shall include all policies that are still in force and all policies sold in the last five years that may no longer be in force.

(d) In the case of the direct response insurer, a copy of the application, signed by the applicant and acknowledged by the insurer, shall be returned to the applicant upon or before delivery of the policy.

(e) Upon determining that a sale will involve replacement, an insurer or its agent, shall furnish the applicant, prior to issuing or delivering the Medicare supplement policy or certificate, a replacement notice. Direct response insurers shall deliver the replacement notice along with the policy or certificate. One copy of the notice signed by the applicant and the agent or insurer shall be provided to the applicant and an additional signed copy shall be retained by the insurer as provided in Section 10508. The replacement notice shall be printed in no less than 10-point type in substantially the following form:

[Insurer's name and address]

NOTICE TO APPLICANT PLANNING TO REPLACE MEDICARE SUPPLEMENT COVERAGE

SAVE THIS NOTICE! IT MAY BE IMPORTANT IN THE FUTURE.

If you intend to cancel or terminate existing Medicare supplement insurance and replace it with coverage issued by [company name], please review the new coverage carefully and replace the existing coverage ONLY if the new coverage materially improves your position. DO NOT CANCEL YOUR PRESENT COVERAGE UNTIL YOU HAVE RECEIVED YOUR NEW POLICY AND ARE SURE THAT YOU WANT TO KEEP IT.

If you decide to purchase the new coverage, you will have 30 days after you receive the policy to return it to the insurer, for any reason, and receive a refund of your money.

If you want to discuss buying Medicare supplement insurance with a trained insurance counselor, call the California Department of Insurance's toll-free number 1-800-927-HELP, and ask how to contact your local Health Insurance Counseling and Advocacy Program (HICAP) office. HICAP is a service provided free of charge by the State of California.

STATEMENT TO APPLICANT FROM THE INSURER AND AGENT: I have reviewed your current health insurance coverage. To the best of my knowledge, the replacement of insurance involved in this transaction does not duplicate coverage. In addition, the replacement coverage contains benefits that are clearly and substantially greater than your current benefits for the following reasons:

____ Additional benefits that are: _____
____ No change in benefits, but lower premiums.
____ Fewer benefits and lower premiums.
____ Other reasons specified here: _____

DO NOT CANCEL YOUR PRESENT POLICY UNTIL YOU HAVE RECEIVED YOUR NEW POLICY AND ARE SURE THAT YOU WANT TO KEEP IT.

_____

(Signature of Agent, Broker, or Other Representative)

_____

(Signature of Applicant)

_____

(Date)

SEC. 13. Section 10197.1 of the Insurance Code is amended to read:

10197.1. (a) Every insurer marketing Medicare supplement insurance coverage in this state, directly or through its producers, shall do all of the following:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Display prominently on the first page of the policy the following:

"Notice to buyer: This policy may not cover all of your medical costs."

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective purchaser for Medicare supplement insurance already has insurance and the types and amounts of that insurance.

(5) Establish auditable procedures for verifying compliance with this subdivision.

(b) In addition to other unfair trade practices identified in this code, the following acts and practices are prohibited:

(1) Twisting: Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies of insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High Pressure Tactics: Employing any method of marketing having the affect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold-Lead Advertising: Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(c) The terms "Medicare Supplement" or "Medicare Wrap-Around" or words of similar import shall not be used unless the coverage and the forms have been approved by the commissioner as in compliance with this article. The term "Medigap" shall not be used.

SEC. 14. Section 10197.6 of the Insurance Code is amended to read:

10197.6. (a) An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first-year commission or other first-year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period. Every insurer shall file with the commissioner its commission structure or an explanation of the insurer's plan to comply with this provision.

(b) The commission or other compensation provided in subsequent renewal years shall be the same as that provided in the second year or period, and shall be provided for at least five years.

(c) For purposes of this section, "commission" or "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, bonuses, gifts, prizes, awards, and finders fees.

(d) If coverage is replaced, no agent, subagent, or other producer shall receive commission or compensation, and no insurer or other entity shall pay commission or compensation, in a greater amount than the renewal compensation for the original coverage.

SEC. 15. Section 2800.2 of the Labor Code is amended to read:

2800.2. (a) Any employer, employee association, or other entity otherwise providing hospital, surgical, or major medical benefits to

its employees or members is solely responsible for notification of its employees or members of the conversion coverage made available pursuant to Part 6.1 (commencing with Section 12670) of Division 2 of the Insurance Code or Section 1373.6 of the Health and Safety Code.

(b) Any employer, employee association, or other entity, whether private or public, that provides hospital, medical, or surgical expense coverage that a former employee may continue under Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, or Section 300bb of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as may be later amended (hereafter "COBRA"), shall, in conjunction with the notification required by COBRA that COBRA continuation coverage will cease and conversion coverage is available, and as a part of the notification required by subdivision (a), also notify the former employee, spouse, or former spouse of the availability of the continuation coverage under Section 1373.621 of the Health and Safety Code, and Sections 10116.5 and 11512.03 of the Insurance Code.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. 17. Section 9.5 of this bill incorporates amendments to Section 10194.7 of the Insurance Code proposed by both this bill and SB 1581. 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 10194.7 of the Insurance Code, and (3) this bill is enacted after SB 1581, in which case Section 10194.7 of the Insurance Code as amended by Section 9 of this bill shall remain operative only until the operative date of SB 1581, at which time Section 9.5 of this bill shall become operative.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the continued availability of Medicare supplement health insurance, it is necessary that this act take effect immediately.

SEC. 19. Sections 6, 7, 8, 10, and 15 shall become operative January 1, 1997.

CHAPTER 1119

An act to amend Sections 33200 and 34120 of the Health and Safety Code, relating to community development.

[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 33200 of the Health and Safety Code is amended to read:

33200. (a) As an alternative to the appointment of five members of the agency, the legislative body may, at the time of the adoption of an ordinance pursuant to Section 33101 or 33140 of this part, or at any time thereafter by adoption of an ordinance, declare itself to be the agency; in which case, all the rights, powers, duties, privileges and immunities, vested by this part in an agency, except as otherwise provided in this article, shall be vested in the legislative body of the community. If a member of the legislative body of a city or county does not wish to serve on the agency, the members may so notify the legislative body of the city or county, and the legislative body of the city or county shall appoint a replacement who is an elector of the city or county to serve out the term of the replaced member.

However, in any community in San Bernardino County which is a charter city, the adoption of any order or resolution by the legislative body acting as the agency shall be governed by the same procedures as are set forth in the provisions of the charter, and the mayor shall be the chairperson of the agency, having the same power and authority in the conduct of the agency and the meetings of the legislative body acting as the agency, that the mayor has in the conduct of the affairs of the city.

As part of the legislative body's ordinance declaring itself to be the redevelopment agency pursuant to this subdivision, the legislative body shall make findings that the action shall serve the public interest and promote the public safety and welfare in an effective manner.

(b) In the event an appointive agency has been designated and has been in existence for at least three years, the legislative body shall not adopt an ordinance declaring itself to be the agency without first conducting a public hearing on the proposed ordinance.

Notice of the public hearing required by this subdivision shall be published not less than once during the 10 calendar days immediately prior to the hearing in a newspaper of general circulation, printed and published in the community, or if there is none, in a newspaper

selected by the legislative body. The notice of hearing shall include a general statement of the procedure and effect of the legislative body's declaring itself to be the agency. Copies of the notice shall be posted throughout the affected project area or areas at least 10 calendar days prior to the hearing. The legislative body shall also mail by first-class mail copies of the notice at least 10 calendar days prior to the hearing, to all persons who have expressed to the agency or the legislative body an interest in receiving information on redevelopment activities.

The legislative body shall cause the preparation of any report or reports or proposals, as are necessary to substantiate and explain the determination that the legislative body shall declare itself the redevelopment agency, to be presented at the public hearing.

As part of the legislative body's ordinance declaring itself to be the redevelopment agency pursuant to this subdivision, the legislative body shall make findings that (1) the action will serve the public interest and promote the public safety and welfare in a more effective manner than the current organization, and (2) there has been full public disclosure of all reports and proposals relating to the legislative body's intent to declare itself the redevelopment agency.

SEC. 2. Section 34120 of the Health and Safety Code is amended to read:

34120. (a) The legislative body may, at the time of the adoption of an ordinance declaring that there is a need for a commission to function in the community or at any time thereafter, by adoption of an ordinance, declare itself to be the commission in which case, all the rights, powers, duties, privileges and immunities, vested by this part in a commission, except as otherwise provided in this part, shall be vested in the legislative body of the community.

However, in any community in San Bernardino County which is a charter city, the adoption of any order or resolution by the legislative body acting as the commission shall be governed by the same procedures as are set forth in the provisions of the charter, and the mayor shall be chairman of the commission, having the same power and authority in the conduct of the commission and the meetings of the legislative body acting as the commission, that the mayor has in the conduct of the affairs of the city.

(b) If the legislative body has declared itself to be the commission, the legislative body shall appoint two additional commissioners who are tenants of the housing authority if the housing authority has tenants. One such tenant commissioner shall be over 62 years of age if the housing authority has tenants of such age. If the housing authority does not have tenants, the legislative body shall, by ordinance, provide for the appointment to the commission of two tenants of the housing authority, one of whom shall be over 62 years of age if the housing authority has tenants of such age, within one year after the housing authority first does have tenants. The term of any tenant appointed pursuant to this subdivision shall be two years from

the date of appointment. If a tenant commissioner ceases to be a tenant of the housing authority, he or she shall be disqualified from serving as a commissioner and another tenant of the housing authority shall be appointed to the remainder of the unexpired term. A tenant commissioner shall have all the powers, duties, privileges, and immunities of any other commissioner.

(c) As an alternative to the appointment of tenants of the housing authority as commissioners pursuant to subdivision (b), if a community development committee is created as provided in Section 34120.5, the governing body may make tenant appointments pursuant to subdivision (b) to the committee, rather than to the commission.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable only to charter cities within San Bernardino County, which would cause uncertainty and disruption to the housing market, extensive litigation, and disruption of redevelopment plans if not remedied by legislation, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

CHAPTER 1120

An act to amend Section 21635 of, to amend and renumber Section 21373 of, and to add Sections 21552 and 21553 to, the Government Code, to add Section 4856 to the Labor Code, and to amend Section 5101.2 of the Vehicle Code, relating to public employees, 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. Section 21373 of the Government Code is amended and renumbered to read:

21551. Notwithstanding any other provisions of this part, the benefits payable to a surviving spouse pursuant to Sections 21541, 21546, 21547, 21548, and Article 3 (commencing with Section 21570), shall be paid as follows:

(a) Any surviving spouse who remarries on or after September 19, 1989, shall continue to receive the lifetime allowance to which he or she is entitled, without reduction. However, pursuant to Section 22811.5, the surviving spouse who remarries on or after that date may not enroll his or her new spouse or stepchildren as family members under the continued health benefits coverage of the surviving spouse.

(b) Any surviving spouse who elected the reduction specified in Section 21550 shall be restored to the lifetime allowance to which he or she was originally entitled, for all benefits payable on or after September 19, 1989.

This section shall not apply to any contracting agency, unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or, in the case of contracts made after September 19, 1989, by express provision in the contract making the contracting agency subject to this section. This section shall only apply to a surviving spouse of a local member employed by the contracting agency whose remarriage occurred on or after the date the agency elects to be subject to this section. Any surviving spouse of a local member of the contracting agency, who elected the reduction specified in Section 21550, shall be restored to the lifetime allowance to which he or she was originally entitled, for all benefits payable on or after the election by the contracting agency to be subject to this section.

This section shall apply to a surviving spouse of a school member employed by a school district whose remarriage occurred on or after January 1, 1991. Any surviving spouse of a school member, who elected the reduction specified in Section 21550, shall be restored to the lifetime allowance to which he or she was originally entitled, for all benefits payable on or after January 1, 1991.

SEC. 2. Section 21552 is added to the Government Code, to read:

21552. Notwithstanding any other provision of this part, on and after the effective date of this section, the remarriage of any surviving spouse of any deceased local safety member who was a firefighter, or peace officer as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who died in the line of duty, shall not result in the reduction or cessation of any monthly allowance the spouse was receiving pursuant to Section 21541 and Article 3 (commencing with Section 21570).

SEC. 3. Section 21553 is added to the Government Code, to read:

21553. (a) The monthly allowance pursuant to Section 21541 and Article 3 (commencing with Section 21570), paid to the surviving spouse of any deceased local safety member who was a firefighter, or peace officer as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who died in the line of duty, shall be restored if that allowance has been reduced or discontinued upon the spouse's remarriage. The allowance shall be resumed on the effective date of this section, or the first of the month, following receipt by the board of a written application from the spouse for resumption of the allowance, whichever is later.

(b) The amount of the benefits due shall be calculated as though the allowance had never been reduced or discontinued because of remarriage, and shall not be payable for the period between the date of reduction or discontinuance and the effective date of resumption.

(c) The board has no duty to identify, locate, or notify a spouse who previously had his or her allowance reduced or discontinued because of remarriage.

(d) Any surviving spouse shall be entitled to restoration of terminated or diminished benefits upon application to the system if he or she previously qualified for special death benefits because his or her spouse died in the line of duty.

SEC. 4. Section 21635 of the Government Code is amended to read:

21635. Notwithstanding any other provisions of this part, survivor continuance allowances payable to surviving spouses upon death after retirement of a member shall not cease upon remarriage if the remarriage occurs on or after January 1, 1985. However, pursuant to Section 22811.5, the surviving spouse may not add the new spouse or stepchildren as family members under the continued health benefits coverage of the surviving spouse.

This section shall not apply to any contracting agency, other than those contracting agencies that are school districts or community college districts, as defined in subdivision (i) of Section 20057, until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or, in the case of contracts made after January 1, 1985, by express provision in the contract making the contracting agency subject to this section and, in that case, this section shall only apply to a surviving spouse of a local member employed by the contracting agency whose remarriage occurred on or after the date the contracting agency elects to be subject to this section.

SEC. 5. Section 4856 is added to the Labor Code, to read:

4856. Whenever any local employee who is a firefighter, or peace officer as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, is killed in the performance of his or her duty or dies as a result of an accident or injury caused by external violence or physical force incurred in the performance of his or her duty, the employer shall continue providing health benefits to the deceased employee's spouse under the same terms and conditions provided prior to the death of the employee unless the surviving spouse elects to receive a lump-sum survivors benefit in lieu of monthly benefits. Minor dependents shall continue to receive benefits under the coverage provided the surviving spouse or, if there is no surviving spouse, until the age of 21 years. However, pursuant to Section 22811.5 of the Government Code, the surviving spouse may not add the new spouse or stepchildren as family members under the continued health benefits coverage of the surviving spouse.

SEC. 6. Section 5101.2 of the Vehicle Code is amended to read:

5101.2. (a) Any person otherwise eligible under this article who is a firefighter or a retired firefighter may apply for special license plates for the vehicle under this article. Any license plates issued

pursuant to this section shall be issued in accordance with Section 5060.

(b) The applicant shall, by satisfactory proof, show all of the following:

(1) The applicant is, or has retired, in good standing as an officer, an employee, or a member of a fire department or a fire service of the state, a county, a city, a district, or any other political subdivision of the state, whether in a volunteer, partly paid, or fully paid status.

(2) The applicant is, or was until retirement, regularly employed as a firefighter or regularly enrolled as a volunteer firefighter.

(3) The applicant's principal duties fall, or fell until retirement, within the scope of active firefighting and any of the following activities:

(A) Fire prevention service.

(B) Fire training.

(C) Hazardous materials abatement.

(D) Arson investigation.

(E) Emergency medical services.

(c) The special license plates issued under this section shall contain the words "California Firefighter" and shall run in a regular numerical series.

(d) In addition to the regular fees for an original registration, a renewal of registration, or a transfer of registration, the following special license plate fees shall be paid:

(1) A fee of thirty-five dollars ($35) for the initial issuance of the special license plates. These special license plates shall be permanent and shall not be required to be replaced.

(2) A fee of twenty dollars ($20) for each renewal of registration which includes the continued display of the special license plates.

(3) If the special license plates become damaged or unserviceable, a fee of thirty-five dollars ($35) for the replacement of the special license plates, obtained from the department upon proper application therefor.

(4) A fee of fifteen dollars ($15) for the transfer of the special license plates to another vehicle qualifying as a vehicle owned by a firefighter who has met the requirements set forth in subdivision (b).

(5) In addition, for the issuance of environmental license plates, as defined in Section 5103, with the special firefighter personal vehicle license plates and distinctive design or decal, the additional fees prescribed in Sections 5106 and 5108. The additional fees collected pursuant to this paragraph shall be deposited in the California Environmental License Plate Fund.

(e) Upon the death of a person issued special license plates pursuant to this section, the plates shall be transferred to the surviving spouse, if he or she requests, or shall be returned to the department within 60 days after the death of the plateholder or upon the expiration of the vehicle registration, whichever occurs first.

(f) Except as provided in paragraph (5) of subdivision (d), the revenues derived from the additional special fees provided in this section, less costs incurred by the department pursuant to this section, shall, prior to January 1, 1999, be deposited in the California Firefighters' Memorial Fund established by Section 18518.2 of the Revenue and Taxation Code.

(g) Except as provided in paragraph (5) of subdivision (d), the revenues derived from the additional special fees provided in this section, less costs incurred by the department pursuant to this section, shall, on and after January 1, 1999, be deposited in the California Fire and Arson Training Fund established by Section 13159.10 of the Health and Safety Code.

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

In order for retirement and health benefit payments to be promptly resumed to surviving spouses of deceased firefighters and peace officers who died in the line of duty this act shall take effect immediately.

CHAPTER 1121

An act to add Sections 19612.9 and 19616.51 to the Business and Professions Code, relating to horseracing.

[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 19612.9 is added to the Business and Professions Code, to read:

19612.9. (a) (1) Except as provided in subdivision (d) of Section 19601, unclaimed refunds shall be distributed to 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 for the purpose of negotiating, in good faith, an agreement of at least three years' duration with a jockeys' organization to provide health and welfare benefits to California licensed jockeys, former California licensed jockeys, and their dependents if those persons contribute to the plan and do not receive welfare benefits pursuant to Section 19613.

(2) The amount of money distributed annually pursuant to this section shall be held in trust solely for the purpose described in this section and shall not exceed four hundred fifty thousand dollars ($450,000), adjusted annually for inflation. The board shall determine

the inflation adjustment based on an index quantifying changes in the cost of health insurance benefits.

(3) If an agreement is not reached before the regular meeting of the board in November of any calendar year, the board, on its own motion, shall provide that the provisions of the existing agreement, if any, shall remain in effect until a subsequent agreement is reached.

(b) The jockeys' organization referred to in subdivision (a) shall represent a majority of the jockeys licensed by the board, and the board shall initially certify that the organization represents the majority of those licensed jockeys. The organization shall maintain an office in this state. The organization certified by the board shall provide an annual audit of the health and welfare fund established pursuant to this section. The organization shall make available to the board all records and documents necessary for the performance of its duties.

(c) The jockeys' organization certified by the board shall develop reasonable nondiscriminatory criteria for eligibility for health and welfare benefits.

(d) (1) The agreement shall be approved by the board and, if approved, no other entity licensed in this state shall be required to enter into an agreement for the purposes of this section.

(2) The board shall ensure that the initial agreement described in subdivision (a) is in effect prior to July 1, 1997.

SEC. 2. Section 19616.51 is added to the Business and Professions Code, to read:

19616.51. (a) Notwithstanding any other provision of law, the state license fee rate on all wagers made in the state on horseraces conducted by, or disseminated by, a thoroughbred racing association or fair shall be reduced from the license fee rate in effect for each type of wager for the majority of 1996 by one-half of 1 percent on January 1, 1997.

(b) All other distributions from handle shall be as provided elsewhere in this chapter. Additionally, any reduction in license fees resulting from compliance with this section shall be distributed 40 percent as commissions, 55 percent as purses, and 5 percent to the official registering agency for thoroughbreds to be distributed pursuant to Section 19617.2.

CHAPTER 1122

An act to amend Sections 5650 and 5650.1 of the Fish and Game Code, relating to water pollution.

[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 5650 of the Fish and Game Code is amended to read:

5650. (a) Except as provided in subdivision (b), it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state any of the following:

(1) Any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material or substance.

(2) Any refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, mill or factory of any kind.

(3) Any sawdust, shavings, slabs, edgings.

(4) Any factory refuse, lime, or slag.

(5) Any cocculus indicus.

(6) Any substance or material deleterious to fish, plant life, or bird life.

(b) This section does not apply to a discharge or a release that is expressly authorized pursuant to the terms of a permit, license, or waiver issued by the State Water Resources Control Board or a regional water quality control board, or that is expressly authorized pursuant to a federal permit or license for which the State Water Resources Control Board or a regional water quality control board has issued a water quality certification pursuant to Section 13160 of the Water Code. This section does not confer additional authority on the State Water Resources Control Board, a regional water quality control board, or any other entity.

(c) It shall be an affirmative defense to a violation of this section if the defendant proves, by a preponderance of the evidence, all of the following:

(1) The defendant complied with all applicable state and federal laws and regulations requiring that the discharge or release be reported to a government agency.

(2) The substance or material did not enter the waters of the state or a storm drain that discharges into the waters of the state.

(3) The defendant took reasonable and appropriate measures to effectively mitigate the discharge or release in a timely manner.

(d) The affirmative defense set forth in subdivision (c) shall not apply and may not be raised in an action for civil penalties or injunctive relief pursuant to Section 5650.1.

SEC. 2. Section 5650.1 of the Fish and Game Code is amended to read:

5650.1. (a) Every person who violates Section 5650 is subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate, and in addition to, any other civil penalty

imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of any civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the discharge, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of any civil penalty on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and any other matters the court determines justice may require.

(d) Every civil action brought under this section shall be brought by the Attorney General upon complaint by the department, or by the district attorney or city attorney in the name of the people of the State of California, and any actions relating to the same violation may be joined or consolidated.

(e) In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding that irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate.

(f) After the party seeking the injunction has met its burden of proof, the court shall determine whether to issue a temporary restraining order, preliminary injunction, or permanent injunction without requiring the defendant to prove that it will suffer grave or irreparable harm. The court shall make the determination whether to issue a temporary restraining order, preliminary injunction, or permanent injunction by taking into consideration, among other things, the nature, circumstance, extent, and gravity of the violation, the quantity and characteristics of the substance or material involved, the extent of environmental harm caused by the violation, measures taken by the defendant to remedy the violation, the relative likelihood that the material or substance involved may pass into waters of the state, and the harm likely to be caused to the defendant.

(g) The court, to the maximum extent possible, shall tailor any temporary restraining order, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will otherwise allow the defendant to continue business operations in a lawful manner.

(h) All civil penalties collected pursuant to this section shall not be considered fines or forfeitures as defined in Section 13003 and shall be apportioned in the following manner:

(1) Fifty percent shall be distributed to the county treasurer of the county in which the action is prosecuted. Amounts paid to the county treasurer shall be deposited in the county fish and wildlife propagation fund established pursuant to Section 13100.

(2) Fifty percent shall be distributed to the department for deposit in the Fish and Game Preservation Fund. These funds may be expended to cover the costs of legal actions or for any other law enforcement purpose consistent with Section 9 of Article XVI of the California Constitution.

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 1123

An act to amend Sections 2102, 2107, 2116, 2119, 2154, 2155, 2157, 2201, 2220, and 2221 of, and to repeal Sections 3401, 3406, and 3407 of, the Elections Code, and to amend Section 6254.4 of the Government Code, relating to voter registration.

[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 2102 of the Elections Code is amended to read:

2102. (a) No person shall be registered as a voter except by affidavit of registration. The affidavit shall be mailed or delivered to the county elections official and shall set forth all of the facts required to be shown by this chapter. A properly executed registration shall be deemed effective upon receipt of the affidavit by the county elections official or on the 29th day before an election to be held in the registrant's precinct if the affidavit is executed on or before the 29th day prior to the election, and if any of the following apply:

(1) The affidavit is received by the county elections official by mail after the 29th day and by the fourth day after the 29th day before the election.

(2) The affidavit is postmarked on or before the 29th day prior to the election and received by mail by the county elections official.

(3) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.

(4) The affidavit is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the 29th day prior to the election.

(b) For purposes of verifying signatures on a recall, initiative, or referendum petition or signatures on a nomination paper or any other election petition or election paper, a properly executed affidavit of registration shall be deemed effective for verification purposes if both (a) the affidavit is signed on the same date or a date prior to the signing of the petition or paper, and (b) the affidavit is received by the county elections official on or before the date on which the petition or paper is filed.

(c) Notwithstanding any other provision of law to the contrary, the affidavit of registration required under this chapter shall not be taken under sworn oath, but the content of the affidavit shall be certified as to its truthfulness and correctness, under penalty of perjury, by the signature of the affiant.

SEC. 2. Section 2107 of the Elections Code is amended to read:

2107. (a) Except as provided in subdivision (b), the county elections official shall accept affidavits of registration at all times except during the 28 days immediately preceding any election, when registration shall cease for that election as to electors residing in the territory within which the election is to be held. Transfers of registration for an election may be made from one precinct to another precinct in the same county at any time when registration is in progress in the precinct to which the elector seeks to transfer.

(b) The county elections official or his or her deputy shall accept an affidavit of registration executed as part of a voter registration card in the forthcoming election if the affidavit is executed on or before the 29th day prior to the election, and if any of the following apply:

(1) The affidavit is received by the county elections official or his or her deputy by mail after the 29th day and by the fourth day after the 29th day.

(2) The affidavit is postmarked on or before the 29th day prior to the election and received by mail by the county elections official.

(3) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.

(4) The affidavit is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the 29th day prior to the election.

SEC. 3. Section 2116 of the Elections Code is amended to read:

2116. (a) Whenever a voter, between the time of that person's last voter registration and the time for the closing of registration for any given election, has changed his or her residence address by moving, the voter shall execute a new affidavit of registration or a notice or a letter of the change of address as permitted in Section 2119, in order to be eligible to vote at the next election.

(b) Notwithstanding subdivision (a), a voter who has changed his or her residence address by moving may vote at the election immediately following the change of residence if he or she is entitled to vote under Section 2035 or 14311.

SEC. 4. Section 2119 of the Elections Code is amended to read:

2119. (a) In lieu of executing a new affidavit of registration for a change of address within the county the county elections official shall accept a notice or letter of the change of address signed by a voter as he or she is registered.

(b) The county elections official shall accept a notification for the forthcoming election and shall change the address on the voter's affidavit of registration accordingly if the notification is executed on or before the 29th day prior to the election and if any of the following apply:

(1) The notification is received by the county elections official by mail after the 29th day and by the fourth day after the 29th day.

(2) The notification is postmarked on or before the 29th day prior to the election and received by mail by the county elections official.

(3) The notification is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.

(4) The notification is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the 29th day prior to the election.

SEC. 5. Section 2154 of the Elections Code is amended to read:

2154. In the event that the county elections official receives an affidavit of registration that does not include portions of the information for which space is provided, the county elections official or registrar of voters shall apply the following rebuttable presumptions:

(a) If no middle name or initial is shown, it shall be presumed that none exists.

(b) If no party affiliation is shown, it shall be presumed that the affiant has no party affiliation.

(c) If no execution date is shown, it shall be presumed that the affidavit was executed on or before the 29th day prior to the election, provided that (1) the affidavit is received by the county elections official on or before the 29th day prior to the election, or (2) the affidavit is received by mail by the county elections official no later than the fourth day after the 29th day prior to the election.

(d) If the affiant fails to identify his or her state of birth within the United States, it shall be presumed that the affiant was born in a state or territory of the United States if the birthplace of the affiant is shown as "United States," "U.S.A.," or other recognizable term designating the United States.

SEC. 6. Section 2155 of the Elections Code is amended to read:

2155. Upon receipt of a properly executed affidavit of registration or address correction notice or letter pursuant to Section 2119, Article 2 (commencing with Section 2220), or the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), the county elections official shall send the voter a voter notification by nonforwardable, first-class mail, address correction requested. The voter notification shall be substantially in the following form:

VOTER NOTIFICATION

You are registered to vote. This card is being sent as a notification of:

1. Your recently completed affidavit of registration,

OR,

2. A correction to your registration because of an official notice that you have moved. If your residence address has not changed or if your move is temporary, please call or write the county elections official immediately.

You may vote in any election held 29 or more days after the date shown on the reverse side of this card.

Your name will appear on the index kept at the polls.

(Signature of Voter)

SEC. 7. Section 2157 of the Elections Code is amended to read:

2157. Subject to this chapter, the affidavit of registration shall be in a form prescribed by regulations adopted by the Secretary of State. The affidavit shall:

(a) Contain the information prescribed in Section 2150.

(b) Be sufficiently uniform among the separate counties to allow for the processing and use by one county of an affidavit completed in another county.

(c) Allow for the inclusion of informational language to meet the specific needs of that county, including but not limited to, the return address of the elections official in that county, and a phone number at which a voter can obtain elections information in that county.

(d) Be included on one portion of a multipart card, to be known as a voter registration card, the other portions of which shall include information sufficient to facilitate completion and mailing of the affidavit. The affidavit portion of the multipart card shall be numbered according to regulations adopted by the Secretary of State. For purposes of facilitating the distribution of voter registration cards as provided in Section 2158, there shall be attached to the affidavit portion a receipt. The receipt shall be separated from the body of the affidavit by a perforated line.

(e) Be returnable to the county elections official as a self-enclosed mailer with postage paid by the Secretary of State.

Nothing contained in this division shall prevent the use of voter registration cards and affidavits of registration in existence on the effective date of this section and produced pursuant to regulations of the Secretary of State, and all references to voter registration cards and affidavits in this division shall be applied to the existing voter registration cards and affidavits of registration.

SEC. 8. Section 2201 of the Elections Code is amended to read:

2201. The county elections official shall cancel the registration in the following cases:

(a) At the signed, written request of the person registered.

(b) When the mental incompetency of the person registered is legally established as provided in Sections 2208, 2209, 2210, and 2211.

(c) Upon proof that the person is presently imprisoned or on parole for conviction of a felony.

(d) Upon the production of a certified copy of a judgment directing the cancellation to be made.

(e) Upon the death of the person registered.

(f) Pursuant to Article 2 (commencing with Section 2220).

(g) Upon official notification that the voter is registered to vote in another county or state.

(h) Upon proof that the person is otherwise ineligible to vote.

SEC. 9. Section 2220 of the Elections Code, as amended by Senate Bill No. 1313 of the 1995–96 Regular Session, is amended to read:

2220. (a) The county elections official shall conduct a preelection residency confirmation procedure as provided in this article. This procedure shall be completed by the 90th day immediately prior to the primary election. The procedure shall be initiated by mailing a nonforwardable postcard to each registered voter of the county preceding the direct primary election. Postcards mailed pursuant to this article shall be sent "Address Correction Requested, Return Postage Guaranteed," and shall be in substantially the following form:

"We are requesting your assistance in correcting the addresses of voters who have moved and have not reregistered.

"1. If you still live at the address noted on this postcard, your voter registration will remain in effect and you may disregard this notice.

"2. If the person named on this postcard is not at this address, please return this postcard to your mail carrier."

(b) The county elections official, at his or her discretion, shall not be required to mail a residency confirmation postcard pursuant to subdivision (a), to any voter who has voted at an election held within the last six months preceding the start of the confirmation procedure.

SEC. 10. Section 2221 of the Elections Code, as amended by Senate Bill No. 1313 of the 1995–96 Regular Session, is amended to read:

2221. (a) Based on the postal notices on the returned residency confirmation postcards received pursuant to Section 2220, the county elections official shall take the following actions:

(1) The affidavits of registration of persons whose residency confirmation postcards are returned by the post office as undeliverable and who have no forwarding address shall be placed in the inactive file pursuant to paragraph (2) of subdivision (a) of Section 2226. These persons shall be mailed the confirmation notices described in subdivision (d) of Section 2225.

(2) The affidavits of registration of persons for whom forwarding addresses within the county are received shall be corrected to reflect the new address provided by the post office.

(3) The affidavits of registration of persons for whom forwarding addresses outside of the county are received shall be placed in the inactive file pursuant to paragraph (2) of subdivision (a) of Section 2226. These persons shall be mailed the confirmation notices described in subdivision (c) of Section 2225.

(b) Blank affidavits of registration shall immediately be mailed to the addresses from which voter registrations were canceled or changed pursuant to this section.

(c) All address corrections and cancellations of affidavits of registration made pursuant to this section shall be reflected on the voter index as required by Section 2191.

SEC. 11. Section 3401 of the Elections Code is repealed.

SEC. 12. Section 3406 of the Elections Code is repealed.

SEC. 13. Section 3407 of the Elections Code is repealed.

SEC. 14. Section 6254.4 of the Government Code is amended to read:

6254.4. (a) The home address, telephone number, occupation, precinct number, and prior registration information shown on the voter registration card for all registered voters is confidential, and shall not be disclosed to any person, except pursuant to Section 615 of the Elections Code.

(b) For purposes of this section, "home address" means street address only, and does not include an individual's city or post office address.

(c) The California driver's license number or California identification card number shown on a voter registration card of a

registered voter is confidential and shall not be disclosed to any person.

SEC. 15. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 1124

An act to amend Sections 1095, 1269, 1274.10, 1342, and 10201 of, to add Sections 1274.05 and 1342.1 to, and to repeal Section 1267.5 of, the Unemployment Insurance Code, relating to unemployment insurance, 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. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes:

(a) To properly present a claim for benefits.

(b) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(c) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000). This subdivision, as it relates to Division 3 (commencing with Section 9000), applies only to subdivision (j) of this section.

(d) To enable an employer to receive a reduction in contribution rate.

(e) To enable the Director of Social Services or his or her representatives or the Director of Health Services or his or her representatives, subject to federal law, to verify or determine the

eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to the Welfare and Institutions Code, and directly connected with, and limited to, the administration of public social services.

(f) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(g) To enable county district attorneys, or their representatives, to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(h) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(i) To enable county departments of collection or their representatives to determine entitlement to medical assistance services rendered pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, and, when appropriate, to enable collection for the county's expenditures for these medical assistance services.

(j) To furnish an employer, or his or her authorized agent, with information including, but not limited to, the applicant's or recipient's name, social security number, address, employable skills, and job placement in order to enable him or her to fully discharge his or her obligations or safeguard his or her rights under the elements of a joint union, management, and Employment Development Department agreement as are deemed necessary to assist displaced workers to obtain new employment under the provisions of Chapter 2.9 (commencing with Section 9970) of Part 1 of Division 3 and related provisions of Division 3 (commencing with Section 9000). The information shall be limited to any information gathered under these divisions by the department and authorized for release by the labor organization which shall act as an agent for the affected workers under terms of the agreement and shall participate in defining the information release provisions.

(k) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code and designated by the head of the law enforcement agency and who requests this information in the course of and as a part of an investigation into the commission of a crime where there is a reasonable suspicion that the crime is a felony and that the

information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency. Any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(1) This subdivision shall not be construed to authorize the release of a general list identifying individuals applying for or receiving benefits to any law enforcement agency.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(*l*) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(m) To provide the State Teachers' Retirement System, pursuant to Section 22242 of the Education Code, with information relating to the earnings of any person who is receiving a disability allowance, or disability retirement allowance, from the State Teachers' Retirement System. The earnings information shall be released to the Teachers' Retirement Board only upon written request from the board specifying that the person is receiving a disability allowance or disability retirement allowance from the system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(n) To provide the Public Employees' Retirement System, pursuant to Section 20143 of the Government Code, with information relating to the earnings of any person who is receiving a disability retirement allowance from the Public Employees' Retirement System. The earnings information shall be released to the Board of Administration of the system only upon written request from the board specifying that the person is receiving a disability retirement allowance from the system. The request may be made by the

executive officer of the system or by an employee of the system so authorized and identified by name and title by the executive officer in writing.

(o) To provide the University of California Retirement System with information in its possession relating to the earnings of any person who has applied for or is receiving disability income from the system. The earnings information shall be disclosed only upon written request from the system specifying that the person has applied for or is receiving disability income from the system. The request may be made by the chief administrative officer of the system or by an employee so authorized and identified by name and title by the chief administrative officer in writing. The system shall notify applicants for and recipients of disability income that earnings information from the department's records will be released upon the system's request. The information obtained pursuant to this subdivision shall be used or disclosed by the system only to determine or to verify entitlement to, or continuing eligibility for, disability income. The system shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(p) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code. The Division of Labor Standards Enforcement shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(q) To enable the federal Department of Health and Human Services, Office of Child Support Enforcement, Federal Parent Locator Service, to administer its child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(r) To provide county probation departments, the State Board of Control, and the United States Attorney General with wage and claim information in its possession that will assist those departments and agencies in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been, or can be recovered, and to assist in the collection of money owed to the county, the state, or the United States by any person who has been directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law. Information provided about victims of crime shall be limited to data necessary to assist in locating them. Nothing in this section shall be construed to prevent the department from providing information to the State Board of Control or the United States Attorney General through electronic methods. The department may charge a fee for

all reasonable administrative expenses incurred pursuant to this subdivision. Except as provided by Section 1463.007 of the Penal Code, any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Except as provided by Section 1463.007 of the Penal Code, any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(s) To provide the Student Aid Commission with information concerning any individuals who are delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by the commission. The information obtained pursuant to this subdivision shall be utilized by the commission exclusively to enable the collection of defaulted loans and other funds owed, pursuant to the authority granted in Chapter 2 (commencing with Section 69500) of Part 42 of the Education Code and Chapter 1 (commencing with Section 30000) of Title 5 of the California Code of Regulations. The information released by the director for the purposes of this subdivision shall not include any employment, wage, or other information concerning any person who is receiving unemployment insurance benefits. The information shall be released to the commission only upon written request from the director of the commission or by an employee so authorized and identified by name and title by the director. The commission shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(t) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body. The Department of Insurance or Department of Industrial Relations shall reimburse the department for all reasonable administrative expenses incurred relative to a request that it submits pursuant to this subdivision. Relevant information may include, but is not limited to, all of the following:

(1) Copies of unemployment and disability insurance application and claim forms and copies of any supporting medical records, documentation, and records pertaining thereto.

(2) Copies of returns or reports filed by an employer pursuant to Section 1088 and copies of supporting documentation.

(3) Copies of benefit payment checks issued to claimants.

(4) Copies of any documentation that specifically identifies the claimant by social security number, residence address, or telephone number.

(u) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information which is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(v) Wages as defined by Section 13009 and amounts required to be deducted and withheld under Section 13020 shall not be disclosed except as provided in Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(w) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is requesting the information, and shall not include information regarding individual employees. The city or county planning agency receiving the information shall adhere to the same standards regarding confidentiality and the protection of proprietary information that the department is required to follow. The city and county planning agencies shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(x) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4778) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code. The State Department of Developmental Services shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

SEC. 1.5. Section 1267.5 of the Unemployment Insurance Code is repealed.

SEC. 2. Section 1269 of the Unemployment Insurance Code is amended to read:

1269. A determination of potential eligibility for benefits under this article shall be issued to an unemployed individual if the director finds that any of the following apply:

(a) The training is authorized by the federal Job Training Partnership Act or by the Employment Training Panel established pursuant to Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3.

(b) The individual has been certified as eligible for services under petitions certified pursuant to the federal Trade Act of 1974, as amended (19 U.S.C. Sec. 2101 et seq.).

(c) The individual is a participant in the Greater Avenues for Independence (GAIN) program pursuant to Article 3.2 (commencing with Section 11320) or Article 3.3 (commencing with Section 11330) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, and has entered into a contract with the county welfare department to participate in an education or training program.

(d) That all of the following apply:

(1) The individual has been unemployed for four or more continuous weeks, or the individual is unemployed and unlikely to return to his or her most recent workplace because work opportunities in the individual's job classification are impaired by a plant closure or a substantial reduction in employment at the individual's most recent workplace, by advancement in technological improvements, by the effects of automation and relocation in the economy, or because of a mental or physical disability which prohibits the individual from utilizing existing occupational skills.

(2) One of the substantial causes of the individual's unemployment is a lack of sufficient current demand in the individual's labor market area for the occupational skills for which the individual is fitted by training and experience or current physical or mental capacity and that the lack of employment opportunities is expected to continue for an extended period of time, or, if the individual's occupation is one for which there is a seasonal variation in demand in the labor market and the individual has no other skill for which there is current demand.

(3) The training or retraining course of instruction relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the labor market area in this state in which the individual intends to seek work and there is not a substantial surplus of workers with requisite skills in the occupation in that area.

(4) If the individual is a journey level union member, the training or retraining course of instruction is specific job-related training necessary due to changes in technology, or necessary to retain employment or to become more competitive in obtaining employment.

(5) The training or retraining course of instruction is one approved by the director and can be completed within one year.

(6) The training or retraining course is a full-time course prescribed for the primary purpose of training the applicant in skills that will allow him or her to obtain immediate employment in a demand occupation and is not primarily intended to meet the requirements of any degree from a college, community college, or university.

(7) The individual can be reasonably expected to complete the training or retraining successfully.

(8) The beginning date of training is more than three years after the beginning date of training last approved for the individual under this subdivision.

SEC. 3. Section 1274.05 is added to the Unemployment Insurance Code, to read:

1274.05. On or before January 1, 1999, the department shall prepare and submit a report to the Legislature that compares wages earned by program participants in their first and third year after completing the program with comparable recipients of unemployment insurance who did not participate in the retraining benefits program.

SEC. 4. Section 1274.10 of the Unemployment Insurance Code is amended to read:

1274.10. This article shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends the date.

SEC. 5. Section 1342 of the Unemployment Insurance Code is amended to read:

1342. Any waiver by any person of any benefit or right under this code is invalid, except as provided by Sections 1255.7, 1342.1, 1345, and 2630. Benefits under this code, incentive payments provided by Division 2 (commencing with Section 5000), and payments to an individual under a plan or system established by an employer which makes provisions for his or her employees generally, or for a class or group of his or her employees, for the purpose of supplementing unemployment compensation benefits, are not subject to assignment, release, or commutation, except as provided by Sections 1255.7, 1342.1, 1345, and 2630. Any agreement by any individual in the employ of any person or concern to pay all or any portion of the contributions required of his or her employer under this division is void.

SEC. 6. Section 1342.1 is added to the Unemployment Insurance Code, to read:

1342.1. (a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, be advised that:

(1) Unemployment compensation and disability insurance benefits, when paid in lieu of unemployment compensation, are subject to federal income tax.

(2) Requirements exist pertaining to estimated tax payments.

(3) The individual may elect to have federal income tax deducted and withheld from the compensation at the amount specified in the Internal Revenue Code.

(4) The individual is permitted to change a previously elected withholding status.

(b) Amounts deducted and withheld from unemployment and disability compensation shall be made in accordance with procedures specified by the United States Department of Labor and Internal Revenue Service pertaining to the deducting and withholding of income tax, and in accordance with the priorities established in department regulations developed by the director.

SEC. 7. Section 10201 of the Unemployment Insurance Code is amended to read:

10201. As used in this chapter:

(a) "Employer" means any employer subject to Part 1 (commencing with Section 100) of Division 1, except any public entity, or any nonprofit organization which has elected an alternate method of financing its liability for unemployment insurance compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3.

Any public entity or nonprofit organization that has elected an alternate method of financing its liability for unemployment insurance compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3, shall be deemed to be an employer only for purposes of placement of new hire trainees who received training as an incidental part of a training project designed to meet the needs of one or more private sector employers.

(b) "Eligible participant" means any person who, prior to beginning training or employment pursuant to this chapter, is any of the following:

(1) Unemployed and has established an unemployment insurance claim in this state, or has exhausted eligibility for unemployment insurance benefits from this state within the previous 24 months.

(2) Employed for a minimum of 90 days, but is determined by the panel to be likely to be displaced and therefore claiming unemployment insurance benefits because of reductions in overall employment within a business, elimination of the person's current job, or a substantial change in the skills required to remain employed due to technological change or other factors, or if employed for less than 90 days, met the conditions of paragraph (1) at the time of hire, had received a notice of layoff from the prior employer, or was employed by an employer for a period of not less than 90 days during the 180-day period prior to the employee's current employment. In making a finding of eligibility under this paragraph, the panel shall

require the employer or contractor to provide, at the option of the employer or the contractor, either of the following:

(A) Certification of the specific facts that threaten the continued employment of the trainee, and a plan for assuring with reasonable certainty that the training being proposed will contribute to the long-term job security of the trainee. The plan shall include, but not be limited to, a general description, with respect to the facility at which the trainee is employed, of other actions planned by the employer, such as technological changes, additional training, management adjustments, and organizational changes, for the purposes of enhancing the effectiveness of the proposed training. The plan shall also include a statement of how the employer plans to sustain the commitment to workplace training after the contract ends, and how the training will affect the productivity and employment security of the workforce. The panel may modify the specific requirements of this subparagraph as they apply to employers or contractors proposing projects that involve training for a significant number of small employers in the same project.

(B) Evidence that the workers proposed to receive retraining have been given written notice that their employment will be terminated within two years of the date the application is presented to the panel.

(3) Employed for a minimum of 90 days, but who is determined by the panel to be in need of training in order to facilitate an employer's adaptation to a high performance workplace or diversification of the production of goods or services in order to meet the productivity goals and competitive needs of the employer's operation, or if employed for less than 90 days, met the conditions of paragraph (1) at the time of hire, had received a notice of layoff from the prior employer, or was employed by an employer for a period of not less than 90 days during the 180-day period prior to the employee's current employment. In making a finding of eligibility under this paragraph, the panel shall require an employer or contractor to submit evidence of change, or plans to change, to a high performance or diversified workplace and a statement of how the employer plans to sustain the commitment to workplace training after the contract ends and how the training will affect the productivity and employment security of the workforce. For purposes of this subdivision, "high performance workplace" means a workplace that invests in the training of frontline workers, as defined in subdivision (a) of Section 10200, to equip these workers with problem solving and decisionmaking skills that result in increased productivity.

(4) Employed, but who is determined by the panel to be qualified to be trained or retrained in skills for which there is a demonstrable shortage and in a field where new employment opportunities will be created for other persons defined in paragraph (1) if this retraining takes place. In making a finding of eligibility under this paragraph,

the panel shall require the employer or contractor to provide a job for at least one unemployed person for each person retrained.

(c) "Panel" means the Employment Training Panel created by Section 10202.

(d) "Fund" means the Employment Training Fund created by Section 1610.

(e) "Department" means the Employment Development Department.

(f) "Training agency" means any private training entity or local educational agency.

(g) "Job" means employment on a basis customarily considered full time for the occupation and industry. The employment shall have definite career potential and a substantial likelihood of providing long-term job security. Furthermore, the employment shall provide earnings, upon completion of the employment requirement specified in subdivision (f) of Section 10209, equal to 50 percent, in the case of new hire training, or 60 percent, in the case of retraining, of the state or regional average hourly wage. However, in no case shall the employment result in earnings of less than 45 percent of the state average hourly wage for new hire training and 55 percent of the state average hourly wage for retraining. The panel may consider the dollar value of health benefits that are voluntarily paid for by an employer when computing earnings to meet the minimum wage requirements.

(h) "Private industry council" means an entity established pursuant to Section 15030.

(i) "New hire training" means employment training, including job-related literacy training, for persons who, at the start of training, are unemployed.

(j) "Retraining" means employment related skill and literacy training for persons who are employed prior to commencement of training and will continue to be employed by the same employer for at least 90 days following completion of training.

(k) "Trainee" means an eligible participant.

(*l*) "State average hourly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year, divided by 40 hours.

SEC. 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 necessary improvements and modifications to employment and training programs as quickly as possible in order

to improve the state's economy, it is necessary that this bill take effect immediately.

CHAPTER 1125

An act to add Section 53087.4 to the Government Code, relating to taxation.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 53087.4 is added to the Government Code, to read:

53087.4. (a) In the case of a special tax levied by a local agency on a per parcel basis, both of the following conditions shall apply:

(1) A parcel created by a subdivision map approved in accordance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7) shall be deemed to be a single assessment unit and shall not be deemed, on the basis of multiple assessor's parcel numbers assigned by the assessor, to constitute multiple assessment units.

(2) A parcel that has not been subdivided in accordance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7) may be deemed to constitute a separate assessment unit only to the extent that that parcel has been previously described and conveyed in one or more deeds separating it from all adjoining property.

(b) If the parcel identified pursuant to paragraph (1) or (2) is not consistent with the property's identification by assessor's parcel number, it shall be the responsibility of the parcel owner to provide the local taxing jurisdiction with written notice of the correct assessor's parcel number of taxable parcels pursuant to this section 30 days after the initial tax bill containing the tax levy.

(c) Any parcel identified pursuant to this section shall be for tax purposes only and shall not confer any entitlement on the property.

(d) This section shall not apply to any special tax levied prior to the effective date of this section.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed 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 1126

An act to amend, repeal, and add Sections 16020, 16070, 16071, 16457, and 40611 of, and to add and repeal Sections 1680, 4000.37, 16028, 16029, 16030, and 16033 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 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) Driving is a privilege and not a right.

(b) Testimony has been presented to the Legislature that proves that the injuries of victims of uninsured motorists are so grave as to shock the public conscience, and this testimony also reveals that these injuries include death, extreme financial hardship, permanent physical disability, and emotional trauma.

(c) Law enforcement in California is prevented from effectively enforcing the vehicle financial responsibility laws because there is no authority to establish evidence of financial responsibility at the time of a traffic stop, and only limited authority to establish evidence after an accident, and this lack of authority has led to at least 28 percent of all vehicles on the roadways being out of compliance with California's existing law requiring financial responsibility.

(d) The towing of a vehicle under this act is not intended by the Legislature to be a punishment of the driver or owner of the vehicle. Fines have been established by the Legislature to punish persons who violate the financial responsibility laws. The towing is, instead, intended to protect the public against grievous bodily injury or death that may be caused by a vehicle when it is operated upon the public roadways in violation of California's existing law that requires that financial responsibility be demonstrated by the owner or driver before the vehicle is operated upon the public roadways.

SEC. 2. Section 1680 is added to the Vehicle Code, to read:

1680. (a) If the operation of Section 4000.37, 16020, 16028, 16029, 16030, 16033, 16070, 16071, 16457, 22651, or 40611 is delayed or interrupted by the action of a state or federal court and the constitutionality of that section is upheld by a final decision of the court, the director shall do all of the following:

(1) Calculate what amount of time the operation of the section was delayed or interrupted by the court's action.

(2) Add the amount calculated pursuant to paragraph (1) to January 1, 2000, to determine a new repeal date for the section.

(3) Notify the Secretary of State in writing of the repeal date calculated pursuant to paragraph (2) and state that the notice is being made pursuant to this section.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 3. Section 4000.37 is added to the Vehicle Code, to read:

4000.37. (a) Upon application for renewal of registration of a vehicle, the department shall require that the applicant submit either the form specified in paragraph (1) or any one of the items specified in paragraph (2) as evidence that the applicant is in compliance with the financial responsibility laws of this state:

(1) A form developed by the department that includes all of the following:

(A) The name and address of the applicant.

(B) The year, make, model, and vehicle identification number of the vehicle.

(C) The name, insurer's identification number, and address of the insurance company or surety company providing a policy or bond for the vehicle.

(D) The effective date and expiration date of the policy or bond.

(E) A statement from the insurance company or surety company that the policy or bond meets the requirements of Section 16056 or 16500.5.

(2) Any of the following:

(A) A statement that the department has issued a certificate of self-insurance to the applicant pursuant to Section 16053, and the number of the certificate.

(B) A copy of a certificate or deposit number of a cash deposit that meets the requirements of Section 16054.2.

(C) An insurance covering note issued pursuant to Section 382 of the Insurance Code.

(D) A statement that the vehicle is owned or leased by, or under the direction of, the United States or any public entity that is included in Section 811.2 of the Government Code.

(E) A notice issued pursuant to Section 16058.

(b) This section does not apply to a vehicle for which a certification has been filed pursuant to Section 4604, until the vehicle is registered for operation on the highway.

(c) This section shall become operative on January 1, 1997.

(d) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that

date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 4. Section 16020 of the Vehicle Code is amended to read:

16020. (a) Every driver and every owner of a motor vehicle shall at all times be able to establish financial responsibility pursuant to Section 16021, and shall at all times carry in the vehicle evidence of the form of financial responsibility in effect for the vehicle.

(b) "Evidence of financial responsibility" means any of the following:

(1) The name of the insurance or surety company that issued a policy or bond for the vehicle that meets the requirements of Section 16056 and is currently in effect, and the number of the insurance policy or surety bond.

(2) If the owner is a self-insurer, as provided in Section 16052 or a depositor, as provided in Section 16054.2, the certificate or deposit number issued by the department.

(3) An insurance covering note, as specified in Section 382 of the Insurance Code.

(4) A showing that the vehicle is owned or leased by, or under the direction of, the United States or any public entity, as defined in Section 811.2 of the Government Code.

(c) For purposes of this section, "evidence of financial responsibility" also includes either of the following:

(1) The number of an insurance policy or surety bond that was in effect at the time of the accident, if that information is contained in the vehicle registration records of the department.

(2) The identifying symbol issued to a highway carrier by the Public Utilities Commission pursuant to Section 3543 of the Public Utilities Code and displayed on the motor vehicle.

(d) For purposes of this section, "evidence of financial responsibility" shall be in writing, and established by writing the name of the insurance company or surety company and the policy number on the vehicle registration card issued by the department.

(e) This section shall become operative on January 1, 1997.

(f) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 5. Section 16020 is added to the Vehicle Code, to read:

16020. (a) Every driver and every owner of a motor vehicle shall at all times be able to establish financial responsibility pursuant to Section 16021, and shall at all times carry in the vehicle evidence of the form of financial responsibility in effect for the vehicle.

(b) "Evidence of financial responsibility" means any of the following:

(1) The name of the insurance or surety company that issued a policy or bond for the vehicle that meets the requirements of Section

16056 and is currently in effect, and the number of the insurance policy or surety bond.

(2) If the owner is a self-insurer, as provided in Section 16052 or a depositor, as provided in Section 16054.2, the certificate or deposit number issued by the department.

(3) An insurance covering note, as specified in Section 382 of the Insurance Code.

(4) A showing that the vehicle is owned or leased by, or under the direction of, the United States or any public entity, as defined in Section 811.2 of the Government Code.

(c) For purposes of this section, "evidence of financial responsibility" also includes the identifying symbol issued to a highway carrier by the Public Utilities Commission pursuant to Section 3543 of the Public Utilities Code and displayed on the motor vehicle.

(d) For purposes of this section, "evidence of financial responsibility" shall be in writing, and established by writing the name of the insurance company or surety company and the policy number on the vehicle registration card issued by the department.

(e) This section shall become operative on January 1, 2000, or on the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later.

SEC. 6. Section 16028 is added to the Vehicle Code, to read:

16028. (a) Upon demand of a peace officer pursuant to subdivision (b) or (c), every person who drives upon a highway a motor vehicle required to be registered in this state shall provide evidence of financial responsibility for the vehicle. However, a peace officer shall not stop a vehicle for the sole purpose of determining whether the vehicle is being driven in violation of this subdivision.

(b) Whenever a notice to appear is issued for any alleged violation of this code, except a violation specified in Chapter 9 (commencing with Section 22500) of Division 11 or any local ordinance adopted pursuant thereto, the cited driver shall furnish written evidence of financial responsibility upon request of the peace officer issuing the citation. The peace officer shall request and write the driver's evidence of financial responsibility on the notice to appear, except where the peace officer is unable to write the driver's evidence of financial responsibility on the notice to appear due to an emergency that requires his or her presence elsewhere. If the cited driver fails to provide evidence of financial responsibility at the time the notice to appear is issued, the peace officer may issue the driver a notice to appear for violation of subdivision (a). The notice to appear for violation of subdivision (a) shall be written on the same citation form as the original violation.

(c) Whenever a peace officer is summoned to the scene of an accident described in Section 16000, the driver of any motor vehicle that is in any manner involved in the accident shall furnish written evidence of financial responsibility upon the request of the peace

officer. If the driver fails to provide evidence of financial responsibility when requested, the peace officer may issue the driver a notice to appear for violation of subdivision (a).

(d) (1) If, at the time a notice to appear for a violation of subdivision (a) is issued, the person is driving a motor vehicle owned, operated, or leased by the driver's employer, and the vehicle is being driven with the permission of the employer, this section shall apply to the employer rather than the driver. In that case, a notice to appear shall be issued to the employer rather than the driver, and the driver may sign the notice on behalf of the employer.

(2) The driver shall notify the employer of the receipt of the notice issued pursuant to paragraph (1) not later than five days after receipt.

(e) A person issued a notice to appear for a violation of subdivision (a) may personally appear before the clerk of the court, as designated in the notice to appear, and provide written evidence of financial responsibility in a form consistent with Section 16020, showing that the driver was in compliance with that section at the time the notice to appear for violating subdivision (a) was issued. In lieu of a personal appearance, the person may submit written evidence of financial responsibility by mail to the court. Upon receipt by the clerk of written evidence of financial responsibility in a form consistent with Section 16020, further proceedings on the notice to appear for the violation of subdivision (a) shall be dismissed.

(f) This section shall become operative on January 1, 1997.

(g) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 7. Section 16029 is added to the Vehicle Code, to read:

16029. Notwithstanding any other provision of law, a violation of subdivision (a) of Section 16028 is an infraction and shall be punished as follows:

(a) Upon a first conviction, by a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(b) Upon a subsequent conviction, occurring within three years of a prior conviction, by a fine of not less than one thousand dollars ($1,000) and not more than two thousand dollars ($2,000).

(c) (1) At the discretion of the court, for good cause, and in addition to the penalties specified in subdivisions (a) and (b), the court may order the impoundment of the vehicle for which the owner could not produce evidence of financial responsibility in violation of subdivision (a) of Section 16028.

(2) A vehicle impounded pursuant to paragraph (1) shall be released to the legal owner of the vehicle or the legal owner's agent if all of the following conditions are met:

(A) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state.

(B) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle.

(C) The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle.

(3) (A) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to paragraph (2) shall not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, except upon presentation of evidence of financial responsibility, as defined in Section 16020, for the vehicle. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the evidence of financial responsibility that is presented is valid.

(B) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(4) A vehicle impounded under paragraph (1) shall be released to a rental car agency if the agency is either the legal owner or the registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(5) A vehicle impounded under paragraph (1) shall be released to the registered owner of the vehicle only upon presentation of evidence of financial responsibility, as defined in Section 16020, for that vehicle, and evidence that all towing and storage fees related to the seizure of the vehicle are paid.

This paragraph does not apply to a person, entity, or agency who is entitled to release of a vehicle under paragraph (2) or (4) and is either:

(A) The registered and the legal owner and is described in subparagraph (A) of paragraph (2).

(B) The registered owner or legal owner and is described in paragraph (4).

(d) It is the intent of the Legislature that fines collected pursuant to this section be used to reduce the number of uninsured drivers and not be used to generate revenue for general purposes.

(e) This section shall become operative on January 1, 1997.

(f) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 8. Section 16030 is added to the Vehicle Code, to read:

16030. (a) Except as provided in subdivision (c), any person who knowingly provides false evidence of financial responsibility (1)

when requested by a peace officer pursuant to Section 16028 or (2) to the clerk of the court as permitted by subdivision (e) of Section 16028, including an expired or canceled insurance policy, bond, or certificate or deposit number, is guilty of a misdemeanor punishable by a fine not exceeding seven hundred fifty dollars ($750) or imprisonment in the county jail not exceeding 30 days, or by both that fine and imprisonment. The court shall additionally suspend the driver's license of any person convicted of a violation of this subdivision for a period of one year commencing upon the date of the conviction, in accordance with Sections 13206 and 13207. Driver's licenses surrendered to the court pursuant to this section shall be transmitted by the court, together with the required report of the conviction, to the department within 10 days of the conviction. Upon conclusion of the period of suspension, the department shall not return the driver's license until the licensee provides evidence of financial responsibility, as defined in Section 16020.

(b) However, in lieu of suspending a person's driving privileges pursuant to subdivision (a), the court shall restrict the person's driving privileges to driving that is required in the person's course of employment, if driving of a motor vehicle is necessary in order to perform the duties of the person's primary employment. The restriction shall remain in effect for the period of suspension otherwise required by subdivision (a). The court shall provide for endorsement of the restriction on the person's driver's license, and violation of the restriction constitutes a violation of Section 14603 and grounds for suspension or revocation of the license under Section 13360.

(c) This section does not apply to a driver who is driving a motor vehicle owned, operated, or leased by the employer of the driver and driven with the permission of the employer.

(d) This section shall become operative on January 1, 1997.

(e) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 9. Section 16033 is added to the Vehicle Code, to read:

16033. (a) No public entity or employee, or any person or organization authorized under Section 4610 to endorse receipts or validate registration cards or potential registration cards, is liable for any loss, detriment, or injury resulting directly or indirectly from failure to request evidence of financial responsibility or inaccurately recording that evidence under Section 16028 or as a result of the driver producing false or inaccurate financial responsibility information.

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

(c) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph

(2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 10. Section 16070 of the Vehicle Code is amended to read:

16070. (a) Whenever a driver involved in an accident described in Section 16000 fails to provide evidence of financial responsibility as required by Section 16020 at the time of the accident, the department shall pursuant to subdivision (b) suspend the privilege of the driver or owner to drive a motor vehicle, including the driving privilege of a nonresident in this state.

(b) Whenever the department receives an accident report pursuant to this article which alleges that any of the drivers involved in the accident was not in compliance with Section 16020 at the time of the accident, the department shall immediately mail to that driver a notice of intent to suspend the driving privilege of that driver. The department shall suspend the driving privilege 30 days after mailing the notice, unless the driver has, prior to that date, established financial responsibility at the time of the accident, as specified in Section 16021, with the department. The suspension notice shall notify the driver of the action taken and the right to a hearing under Section 16075.

(c) This section shall become operative on January 1, 1997.

(d) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 11. Section 16070 is added to the Vehicle Code, to read:

16070. (a) Whenever a driver involved in an accident described in Section 16000 fails to prove the existence of financial responsibility as required by Section 16020 at the time of the accident, the department shall, pursuant to subdivision (b), suspend the privilege of the driver or owner to drive a motor vehicle, including the driving privilege of a nonresident in this state.

(b) Whenever the department receives an accident report pursuant to this article which alleges that any of the drivers involved in the accident was not in compliance with Section 16020 at the time of the accident, the department shall immediately mail to that driver a notice of intent to suspend the driving privilege of that driver. The department shall suspend the driving privilege 30 days after mailing the notice, unless the driver has, prior to that date, established proof of financial responsibility at the time of the accident, as specified in Section 16021, with the department. The suspension notice shall notify the driver of the action taken and the right to a hearing under Section 16075.

(c) This section shall become operative on January 1, 2000, or on the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later.

SEC. 12. Section 16071 of the Vehicle Code is amended to read:

16071. (a) The department shall suspend the driving privilege of any person upon receiving notice from another state that the person's driving privilege in that state has been suspended for failure to meet the financial responsibility provisions of the law in that state, if the suspension in that state was taken on grounds that would have resulted in a suspension in this state.

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

(c) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 13. Section 16071 is added to the Vehicle Code, to read:

16071. (a) The department shall suspend the driving privilege of any person upon receiving notice from another state that the person's driving privilege in that state has been suspended for failure to meet the proof of financial responsibility provisions of the law in that state, if the suspension in that state was taken on grounds that would have resulted in a suspension in this state.

(b) This section shall become operative on January 1, 2000, or on the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later.

SEC. 14. Section 16457 of the Vehicle Code is amended to read:

16457. (a) Whenever proof of financial responsibility is required to be filed pursuant to this chapter, no person of whom that proof is required shall drive any motor vehicle not covered by the certificate of proof of financial responsibility filed by him or her with the department, nor shall any applicant for that proof knowingly fail to disclose ownership of a motor vehicle in the application for proof of financial responsibility or to disclose any subsequently acquired motor vehicle.

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

(c) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 15. Section 16457 is added to the Vehicle Code, to read:

16457. (a) Whenever proof of financial responsibility is required to be filed pursuant to Section 16432, no person of whom that proof is required shall drive any motor vehicle not covered by the certificate of proof of financial responsibility filed by him or her with the department, nor shall any applicant for that proof knowingly fail to disclose ownership of a motor vehicle in the application for proof of financial responsibility or to disclose any subsequently acquired motor vehicle.

(b) This section shall become operative on January 1, 2000, or on the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later.

SEC. 16. Section 40611 of the Vehicle Code is amended to read:

40611. Upon proof of correction of an alleged violation of Section 12500 or 12951, or any violation cited pursuant to Section 40610, or upon submission of evidence of financial responsibility pursuant to subdivision (e) of Section 16028, the clerk shall collect a ten dollar ($10) transaction fee for each case. The fee shall be deposited by the clerk in accordance with Section 68084 of the Government Code, and allocated monthly as follows:

(a) Thirty-three percent shall be transferred to the local governmental entity in whose jurisdiction the citation was issued for deposit in the general fund of the entity.

(b) Thirty-four percent shall be transferred to the State Treasury for deposit in the State Penalty Fund established by Section 1464 of the Penal Code.

(c) Thirty-three percent shall be deposited in the county general fund.

(d) No fee shall be imposed pursuant to this section if the violation notice is processed only by the issuing agency and no record of the action is transmitted to the court.

(e) This section shall become operative on January 1, 1997.

(f) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 17. Section 40611 is added to the Vehicle Code, to read:

40611. Upon proof of correction of an alleged violation of Section 12500 or 12951, or any violation cited pursuant to Section 40610, the clerk shall collect a ten dollar ($10) transaction fee for each case. The fee shall be deposited by the clerk in accordance with Section 68084 of the Government Code, and allocated monthly as follows:

(a) Thirty-three percent shall be transferred to the local governmental entity in whose jurisdiction the citation was issued for deposit in the general fund of the entity.

(b) Thirty-four percent shall be transferred to the State Treasury for deposit in the State Penalty Fund established by Section 1464 of the Penal Code.

(c) Thirty-three percent shall be deposited in the county general fund.

(d) No fee shall be imposed pursuant to this section if the violation notice is processed only by the issuing agency and no record of the action is transmitted to the court.

(e) This section shall become operative on January 1, 2000, or on the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later.

SEC. 18. 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. 19. 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. 20. This act shall become operative only if Senate Bill 49 is enacted and becomes operative.

CHAPTER 1127

An act to add Sections 15399.57 and 15399.58 to the Government Code, relating to regulatory fees.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 15399.57 is added to the Government Code, to read:

15399.57. (a) The office shall establish, compile, and maintain a list of all fees or charges assessed or collected by any state board, agency, or department.

(b) For purposes of this section and Section 15399.58, "state board, agency, or department" does not include any local or regional entity, department, or district, and "fee or charge" does not include any fee or charge collected by a state board, agency, or department on behalf of any local or regional entity, department, or district.

(c) The list maintained pursuant to subdivision (a) shall be available to the public pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1.

(d) (1) Commencing with the first quarter of calendar year 1997, each state board, agency, or department shall submit to the office quarterly reports of the total dollar amount of fees or charges collected or assessed by each state board, agency, or department. The

report for each quarter shall be submitted on or before the last day of the following quarter. The report shall list separately each fee or charge collected or assessed.

(2) The report submitted pursuant to paragraph (1) shall contain a certification by the state board, agency, or department that the information submitted in the report is an accurate and complete record of the fees or charges assessed or collected during the quarter for which the report is submitted.

(e) (1) Within 30 days from the date that the office receives the information submitted by a state board, agency, or department pursuant to subdivision (d), the office shall enter the information into the list maintained pursuant to subdivision (a).

(2) The office shall enter fees or charges collected or assessed by the office itself into the list maintained pursuant to subdivision (a), for each quarter on or before the last day of the following quarter. Each entry shall list separately each regulatory fee or charge collected or assessed.

SEC. 2. Section 15399.58 is added to the Government Code, to read:

15399.58. (a) Commencing in 1998, the office shall create and make available to the public an annual inventory which, based on information in the list maintained pursuant to subdivision (a) of Section 15399.57, shall list the total dollar amount of fees or charges assessed or collected by all state boards, agencies, or departments during the preceding calendar year. The inventory shall be created within 90 days from the end of the calendar year which is the subject of the inventory. The inventory shall include all of the following items:

(1) The total dollar amount of fees or charges assessed or collected by state boards, agencies, or departments, under each provision of law, which shall be listed separately. For each separate listing, the inventory shall identify the state board, agency, or department that collected or assessed the fee or charge. If more than one state board, agency, or department collected or assessed a fee or charge pursuant to the same statutory or regulatory provision, the inventory shall separately list the total dollar amount collected or assessed by each state board, agency, or department pursuant to that provision.

(2) The number of facilities from which the fee revenue in each separate category listed pursuant to paragraph (1) was collected.

(3) The total dollar amount of fees or charges assessed or collected by each state board, agency, or department during the preceding calendar year. This list shall not be broken down in accordance with the statutory provision, statute, or regulation that authorizes the fee or charge.

(b) The annual inventory shall contain a certification by the office that the inventory is an accurate and complete record of the reports submitted to the office for the preceding calendar year pursuant to Section 15399.57.

(c) For purposes of the initial annual inventory only, the office shall include its costs incurred in complying with this section and Section 15399.57.

SEC. 3. 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 1128

An act relating to veterans.

[Approved by Governor September 30, 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 hereby finds and declares all of the following:

(1) The northernmost cemetery for deceased veterans is currently located in San Joaquin County.

(2) Many families of veterans are not physically or financially able to travel from northern counties, including, but not limited to, Shasta, Humboldt, Mendocino, Del Norte, Trinity, and Modoc, to the nearest veterans cemetery.

(b) The Department of Veterans Affairs, in voluntary cooperation with the Shasta County Board of Supervisors, shall develop a proposal for a state-owned and operated veterans cemetery in Shasta County. The proposal shall address all of the following:

(1) The appropriateness of a state-owned and operated veterans cemetery.

(2) The cost of the real property, and possible sources of funding therefor.

(3) The cost of interment, and possible sources of funding therefor.

(4) The cost of annual operations, and possible sources of funding therefor.

(5) The cost of maintenance, upkeep, repair, and beautification of the graves, and possible sources of funding, including the establishment of a perpetual fund, therefor.

(6) Method of supervision, including both state and local participation, and possible sources of funding therefor.

(7) When addressing the possible sources of funding, consideration shall be given to private, federal, state, and local sources.

(8) When addressing the costs, consideration shall be given to the ability to reduce costs by contracting certain functions out to private agencies, and to the potential for volunteer support.

(9) Other relevant factors.

(c) The proposal shall be submitted to the Legislature by July 1, 1997. The costs associated with the preparation of the proposal shall be absorbed within the department's current resources.

CHAPTER 1129

An act to add Article 5 (commencing with Section 89340) to Chapter 3 of Part 55 of the Education Code, relating to postsecondary education.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Article 5 (commencing with Section 89340) is added to Chapter 3 of Part 55 of the Education Code, to read:

Article 5. Higher Education Outreach and Assistance Act for Emancipated Foster Youth

89340. This article shall be known, and may be cited as the Higher Education Outreach and Assistance Act for Emancipated Foster Youth.

89341. (a) The Legislature makes the following findings and declarations:

(1) Children who live in foster care are abused and neglected individuals for whom the state has assumed parental responsibility. Although foster care is designed to reunite those children, when appropriate, with their parents, or to place those children with an adoptive family, many children are neither reunited with their parents nor adopted. When those children reach the age of 18 years, the state terminates its responsibility to those youth. Many of those youth are not prepared to sustain themselves independently. As a result, a disproportionate number of former foster youth are homeless, dependent on public assistance, unemployed, and more likely to commit suicide. Foster youth are also much less likely to attend college than other youth.

(2) In California, there are more than 90,000 children in foster care. Every year 4,000 youth leave foster care upon reaching the age of 18 years. While more than one-half of high school graduates go on to enroll in college, less than 25 percent of foster youth in California

enroll in college. Of the foster youth who do enroll in college, only 7 percent enroll in a four-year university.

(3) While the foster youth college enrollment rate is extremely low, the college dropout rate of foster youth is extremely high. Studies also indicate that while few former foster youth enroll in college, even fewer go on to earn a degree. Sixty-seven percent of all emancipated foster youth who enroll in college will drop out before graduation. One of the critical hurdles for this student population to overcome is finding the financial resources to fund their education. Only 10 percent of foster youth who apply for a Cal Grant, California's need-based financial aid award, actually ever receive that grant.

(4) Emancipated foster youth, who do not have parents to rely upon for support and guidance, suffer unique disadvantages compared to other students. While many students are preoccupied with academic pressures, the primary concerns cited by former foster youth are the absence of family support and the fear of spending the holidays alone. Emancipated foster youth need emotional support and specialized resources from sensitive university staff who understand the unusual circumstances and pressing needs of emancipated foster youth.

(b) Accordingly, the Legislature states its intent that the Trustees of the California State University and the Board of Governors of the California Community Colleges expand the access and retention programs of the university and the community colleges to include the following:

(1) Outreach services to foster youth to encourage their enrollment in a state university or a community college.

(2) Technical assistance to foster youth to assist those prospective students in completing admission applications and financial aid applications.

89342. The Trustees of the California State University and Board of Governors of the California Community Colleges shall perform the following services to assist emancipated foster youth:

(a) Review housing issues for those emancipated foster youth living in college dormitories to ensure basic housing during the regular academic school year, including vacations and holidays other than summer break.

(b) Provide technical assistance and advice to campuses on ways in which to improve the delivery of services to emancipated foster youth.

(c) Commencing in the 1998-99 academic year, track the retention rates of students who voluntarily disclose to the university or community college their status as former emancipated foster youth.

89343. The Trustees of the California State University and Board of Governors of the California Community Colleges shall evaluate the extent to which their current programs are meeting the needs of

foster youth and how those outreach and retention services can be improved. The trustees and the board of governors shall make a progress report to the Legislature by January 1, 1998, on their current and expanded services and efforts to increase the number of emancipated foster youth who attend the university or a community college and remain in school to earn a degree or certificate.

89344. Representation on the appropriate California State University Advisory Councils shall be expanded to include at least one former emancipated foster youth who is either a current or former student at the university.

89345. The State University Educational Opportunity Program and California Community College Extended Opportunity Programs and Services shall ensure that identified emancipated foster youth are informed of services, including mentoring, provided by these programs.

89346. The State Department of Social Services and county welfare departments shall, in coordination with the California State University and the California Community Colleges, communicate with foster youth at two grade levels designated jointly by the California State University and the California Community Colleges in order to facilitate the outreach and technical assistance efforts for those prospective students.

89347. The Student Aid Commission shall provide outreach services and technical assistance to foster youth at the two grade levels designated jointly by the California State University and the California Community Colleges. The State Department of Social Services and county welfare departments shall, in coordination with the Student Aid Commission, communicate with foster youth at the two grade levels designated jointly by the California State University and the California Community Colleges in order to facilitate the Student Aid Commission's outreach and technical assistance efforts for those prospective students.

SEC. 2. It is the intent of the Legislature that the University of California and private and independent colleges and universities undertake efforts similar to those described in Article 5 (commencing with Section 89340) of Chapter 3 of Part 55 of the Education Code to assist emancipated foster youth. It is also the intent of the Legislature that the State Department of Social Services and the county welfare departments coordinate with the University of California, the California State University, the California Community Colleges, private and independent colleges and universities, and the Student Aid Commission to facilitate outreach and technical assistance efforts on behalf of foster youth at all grade levels.

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 1130

An act to add Section 6077 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 6077 is added to the Revenue and Taxation Code, to read:

6077. (a) Any retail florist who fails to obtain a permit before engaging in or conducting business as a seller shall, in addition to any other applicable penalty, pay a penalty of five hundred dollars ($500).

(b) Every mobile retail florist shall have a copy of the permit at each sales location which shall be in the possession of a person operating at that location.

(c) For purposes of this section:

(1) "Retail florist" means any person selling any flowers, potted hornamental plants, floral arrangements, floral bouquets, wreaths, or any similar products at retail. "Retail florist" does not include any flower or ornamental plant grower who sells his or her own products.

(2) "Mobile retail florist" means any retail florist who does not sell from a structure or retail shop, including, but not limited to, a florist who sells from a vehicle, pushcart, wagon, or other portable method, or who sells at a swap meet, flea market, or similar transient location.

CHAPTER 1131

An act to repeal and add Section 593d of the Penal Code, relating to crimes.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. The Legislature hereby finds and declares that:

(a) To the extent consistent with the multichannel video or information service providers' rights to protect the integrity of their signals and to prevent theft of service and the unauthorized interception or reception of their signals, it is in the consumers' best interest to be able to purchase converter boxes, interactive communications equipment, and other equipment used to access multichannel video programming and other services offered over multichannel video programming or information systems from manufacturers, retailers, and other vendors not affiliated with any multichannel video or information service provider.

(b) The Federal Communications Commission is urged to expedite the adoption of regulations to ensure the commercial consumer availability of equipment used to access services provided by multichannel video programming distributors in a manner consistent with the legislative mandate of Congress in the Telecommunications Act of 1996 and its amendments to Section 629 of the Communications Act, and in a manner that protects the system security of multichannel video or information service providers and their rights to prevent theft of service and the unauthorized reception or interception of their signals.

(c) For purposes of subdivision (a), "converter box" means any device, designed in whole or in part, to decrypt, decode, descramble, or otherwise make intelligible any encrypted, encoded, scrambled, or otherwise nonstandard signal carried by that operator.

SEC. 2. Section 593d of the Penal Code is repealed.

SEC. 3. Section 593d is added to the Penal Code, to read:

593d. (a) Except as provided in subdivision (e), any person who, for the purpose of intercepting, receiving, or using any program or other service carried by a multichannel video or information services provider that the person is not authorized by that provider to receive or use, commits any of the following acts is guilty of a public offense:

(1) Knowingly and willfully makes or maintains an unauthorized connection or connections, whether physically, electrically, electronically, or inductively, to any cable, wire, or other component of a multichannel video or information services provider's system or to a cable, wire or other media, or receiver that is attached to a multichannel video or information services provider's system.

(2) Knowingly and willfully purchases, possesses, attaches, causes to be attached, assists others in attaching, or maintains the attachment of any unauthorized device or devices to any cable, wire, or other component of a multichannel video or information services provider's system or to a cable, wire or other media, or receiver that is attached to a multichannel video or information services provider's system.

(3) Knowingly and willfully makes or maintains any modification or alteration to any device installed with the authorization of a multichannel video or information services provider.

(4) Knowingly and willfully makes or maintains any modifications or alterations to an access device that authorizes services or knowingly and willfully obtains an unauthorized access device and uses the modified, altered, or unauthorized access device to obtain services from a multichannel video or information services provider.

For purposes of this section, each purchase, possession, connection, attachment, or modification shall constitute a separate violation of this section.

(b) Except as provided in subdivision (e), any person who knowingly and willfully manufactures, assembles, modifies, imports into this state, distributes, sells, offers to sell, advertises for sale, or possesses for any of these purposes, any device or kit for a device, designed, in whole or in part, to decrypt, decode, descramble, or otherwise make intelligible any encrypted, encoded, scrambled, or other nonstandard signal carried by a multichannel video or information services provider, unless the device has been granted an equipment authorization by the Federal Communications Commission (FCC), is guilty of a public offense.

For purposes of this subdivision, "encrypted, encoded, scrambled, or other nonstandard signal" means any type of signal or transmission that is not intended to produce an intelligible program or service without the use of a special device, signal, or information provided by the multichannel video or information services provider or its agents to authorized subscribers.

(c) Every person who knowingly and willfully makes or maintains an unauthorized connection or connections with, whether physically, electrically, electronically, or inductively, or who attaches, causes to be attached, assists others in attaching, or maintains any attachment to, any cable, wire, or other component of a multichannel video or information services provider's system, for the purpose of interfering with, altering, or degrading any multichannel video or information service being transmitted to others, or for the purpose of transmitting or broadcasting any program or other service not intended to be transmitted or broadcast by the multichannel video or information services provider, is guilty of a public offense.

For purposes of this section, each transmission or broadcast shall constitute a separate violation of this section.

(d) (1) Any person who violates subdivision (a) shall be punished by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding 90 days, or by both that fine and imprisonment.

(2) Any person who violates subdivision (b) shall be punished as follows:

(A) If the violation involves the manufacture, assembly, modification, importation into this state, distribution, advertisement

for sale, or possession for sale or for any of these purposes, of 10 or more of the items described in subdivision (b), or the sale or offering for sale of five or more items for financial gain, the person shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison, by a fine not exceeding two hundred fifty thousand dollars ($250,000), or by both that imprisonment and fine.

(B) If the violation involves the manufacture, assembly, modification, importation into this state, distribution, advertisement for sale, or possession for sale or for any of these purposes, of nine or less of the items described in subdivision (b), or the sale or offering for sale of four or less items for financial gain, shall upon a conviction of a first offense, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding twenty-five thousand dollars ($25,000), or by both that imprisonment and fine. A second or subsequent conviction shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison, by a fine not exceeding one hundred thousand dollars ($100,000), or by both that imprisonment and fine.

(3) Any person who violates subdivision (c) shall be punished by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in a county jail, or by both that fine and imprisonment.

(e) Any device or kit described in subdivision (a) or (b) seized under warrant or incident to a lawful arrest, upon the conviction of a person for a violation of subdivision (a) or (b), may be destroyed as contraband by the sheriff.

(f) Any person who violates this section shall be liable in a civil action to the multichannel video or information services provider for the greater of the following amounts:

(1) Five thousand dollars ($5,000).

(2) Three times the amount of actual damages, if any, sustained by the plaintiff plus reasonable attorney's fees.

A defendant who prevails in the action shall be awarded his or her reasonable attorney's fees.

(g) Any multichannel video or information services provider may, in accordance with the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this section, and may in the same action seek damages as provided in subdivision (g).

(h) It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

(i) For the purposes of this section, a "multichannel video or information services provider" means a franchised or otherwise duly licensed cable television system, video dialtone system, Multichannel Multipoint Distribution Service system, Direct Broadcast Satellite system, or other system providing video or information services that are distributed via cable, wire, radio frequency, or other media. A video dialtone system is a platform operated by a public utility

telephone corporation for the transport of video programming as authorized by the Federal Communications Commission pursuant to FCC Docket No. 87-266, and any subsequent decisions related to that docket, subject to any rules promulgated by the FCC pursuant to those decisions.

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 1132

An act to amend Section 11370.1 of the Health and Safety Code, and to amend Sections 1000, 1000.1, 1000.2, and 1000.3 of, and to amend, renumber, and add Section 1000.5 of, the Penal Code, relating to drug abuse.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 11370.1 of the Health and Safety Code is amended to read:

11370.1. (a) Notwithstanding Section 11350 or 11377 or any other provision of law, every person who unlawfully possesses any amount of a substance containing cocaine base, a substance containing cocaine, a substance containing heroin, a substance containing methamphetamine, a crystalline substance containing phencyclidine, a liquid substance containing phencyclidine, plant material containing phencyclidine, or a hand-rolled cigarette treated with phencyclidine while armed with a loaded, operable firearm is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

As used in this subdivision, "armed with" means having available for immediate offensive or defensive use.

(b) Any person who is convicted under this section shall be ineligible for diversion or deferred entry of judgment under Chapter

2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code.

SEC. 2. Section 1000 of the Penal Code is amended to read:

1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4230 of the Business and Professions Code, and it appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged offense.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(5) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense.

(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense.

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) apply to the defendant. Upon the agreement of the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the criminal division of the municipal court or a judge designated by the presiding judge, this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for deferred entry of judgment at the arraignment. If the defendant is found ineligible for deferred entry of judgment, the prosecuting

attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal.

(c) All referrals for deferred entry of judgment granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

(d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.

(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urine analysis results shall not be admissible as a basis for any new criminal prosecution or proceeding.

SEC. 2.5. Section 1000 of the Penal Code is amended to read:

1000. (a) This chapter shall apply whenever both of the following occur:

(1) A case is before any court upon an accusatory pleading for a violation of any of the following:

(A) Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code.

(B) Section 11358 of the Health and Safety Code, if the marijuana planted, cultivated, harvested, dried, or processed is for personal use.

(C) Section 11368 of the Health and Safety Code, if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another.

(D) Subdivision (d) of Section 653f, if the solicitation was for acts directed to personal use only.

(E) Section 381 or subdivision (f) of Section 647, if for being under the influence of a controlled substance.

(F) Section 4230 of the Business and Professions Code.

(2) It appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(A) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged offense.

(B) The offense charged did not involve a crime of violence or threatened violence.

(C) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(D) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(E) The defendant's record does not indicate that he or she has previously successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter.

(F) The defendant has no prior felony conviction.

(b) The prosecuting attorney shall review his or her file to determine whether or not subparagraphs (A) to (F), inclusive, of paragraph (2) of subdivision (a) apply to the defendant. Upon the agreement of the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the criminal division of the municipal court or a judge designated by the presiding judge, this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for deferred entry of judgment at the arraignment. If the defendant is found ineligible for deferred entry of judgment, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal.

(c) All referrals for deferred entry of judgment granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

(d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.

(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of a treatment and supervision program. However, urine analysis results

shall not be admissible as a basis for any new criminal prosecution or proceeding.

SEC. 3. Section 1000.1 of the Penal Code is amended to read:

1000.1. (a) If the prosecuting attorney determines that this chapter may be applicable to the defendant, he or she shall advise the defendant and his or her attorney in writing of that determination. This notification shall include the following:

(1) A full description of the procedures for deferred entry of judgment.

(2) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in the process.

(3) A clear statement that in lieu of trial, the court may grant deferred entry of judgment with respect to any crime specified in subdivision (a) of Section 1000 that is charged, provided that the defendant pleads guilty to each such charge and waives time for the pronouncement of judgment, and that upon the defendant's successful completion of a program, as specified in subdivision (c) of Section 1000, the positive recommendation of the program authority and the motion of the prosecuting attorney, the court, or the probation department, but no sooner than 18 months and no later than three years from the date of the defendant's referral to the program, the court shall dismiss the charge or charges against the defendant.

(4) A clear statement that upon any failure of treatment or condition under the program, or any circumstance specified in Section 1000.3, the prosecuting attorney or the probation department or the court on its own may make a motion to the court for entry of judgment and the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

(5) An explanation of criminal record retention and disposition resulting from participation in the deferred entry of judgment program and the defendant's rights relative to answering questions about his or her arrest and deferred entry of judgment following successful completion of the program.

(b) If the defendant consents and waives his or her right to a speedy trial or a speedy preliminary hearing, the court may refer the case to the probation department or the court may summarily grant deferred entry of judgment if the defendant pleads guilty to the charge or charges and waives time for the pronouncement of judgment. When directed by the court, the probation department shall make an investigation and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior controlled substance use, treatment history, if any, demonstrable motivation, and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation.

The probation department shall also determine which programs the defendant would benefit from and which programs would accept the defendant. The probation department shall report its findings and recommendations to the court. The court shall make the final determination regarding education, treatment, or rehabilitation for the defendant. If the court determines that it is appropriate, the court shall grant deferred entry of judgment if the defendant pleads guilty to the charge or charges and waives time for the pronouncement of judgment.

(c) No statement, or any information procured therefrom, made by the defendant to any probation officer or drug treatment worker, that is made during the course of any investigation conducted by the probation department or treatment program pursuant to subdivision (b), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.

No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, that is made to any probation officer or drug program worker subsequent to the granting of deferred entry of judgment, shall be admissible in any action or proceeding, including a sentencing hearing.

(d) A defendant's plea of guilty pursuant to this chapter shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to Section 1000.3.

SEC. 4. Section 1000.2 of the Penal Code is amended to read:

1000.2. The court shall hold a hearing and, after consideration of any information relevant to its decision, shall determine if the defendant consents to further proceedings under this chapter and if the defendant should be granted deferred entry of judgment. If the court does not deem the defendant a person who would be benefited by deferred entry of judgment, or if the defendant does not consent to participate, the proceedings shall continue as in any other case.

At the time that deferred entry of judgment is granted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

The period during which deferred entry of judgment is granted shall be for no less than 18 months nor longer than three years. Progress reports shall be filed by the probation department with the court as directed by the court.

SEC. 5. Section 1000.3 of the Penal Code is amended to read:

1000.3. If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or that the defendant is convicted of a misdemeanor that reflects the defendant's propensity for violence, or the defendant is convicted of

a felony, or the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the prosecuting attorney, the court on its own, or the probation department may make a motion for entry of judgment.

After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered.

If the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or the court finds that the defendant has been convicted of a crime as indicated above, or that the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

If the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the criminal charge or charges shall be dismissed.

Prior to dismissing the charge or charges, the court shall consider the defendant's ability to pay and whether the defendant has paid a diversion restitution fee pursuant to Section 1001.90, if ordered, and an administration fee to the probation department, if ordered, and has met his or her financial obligation to the program, if any.

SEC. 6. Section 1000.5 of the Penal Code is amended and renumbered to read:

1000.4. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the deferred entry of judgment program, the arrest upon which the judgment was deferred may be disclosed by the Department of Justice in response to any peace officer application request made within five years of the arrest, and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830, made within five years of the arrest.

SEC. 6.5. Section 1000.5 of the Penal Code is amended and renumbered to read:

1000.4. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the deferred entry of judgment program, the arrest upon which the judgment was deferred may be disclosed by the Department of Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

SEC. 7. Section 1000.5 is added to the Penal Code, to read:

1000.5. (a) The presiding judge of the superior or municipal court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions and rewards, individual and group therapy, urine analysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a deferred entry of judgment program as provided in this chapter.

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the

period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 1000 of the Penal Code proposed by both this bill and AB 2710. 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 1000 of the Penal Code, and (3) this bill is enacted after AB 2710, in which case Section 2 of this bill shall not become operative.

SEC. 9. Section 6.5 of this bill incorporates amendments to Section 1000.5 of the Penal Code proposed by both this bill and AB 3098. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) AB 3098 amends Section 1000.5 of the Penal Code, (3) this bill amends and renumbers Section 1000.5 of the Penal Code, and (4) this bill is enacted after AB 3098, in which case Section 6 of this bill shall not become operative.

CHAPTER 1133

An act to amend Sections 1091 and 1091.5 of the Government Code, relating to conflicts of interest.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 1091 of the Government Code is amended to read:

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body of the board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of or a person having an ownership interest of 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

SEC. 2. Section 1091.5 of the Government Code is amended to read:

1091.5. (a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(1) The ownership of less than 3 percent of the shares of a corporation for profit, provided the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

(2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty.

(3) That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the board.

(4) That of a landlord or tenant of the contracting party if such contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of such contract is the property in which such officer or employee has such interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.

(5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.

(6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.

(7) That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records.

(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records.

For purposes of this paragraph an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing duties of his or her office.

(9) That of compensation for employment with a governmental agency, other than the governmental agency that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.

(10) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(11) Except as provided in subdivision (b), that of an officer or employee of or a person having less than a 10 percent ownership interest in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor, or creditor.

(b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

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 1134

An act to amend Section 54952 of the Government Code, relating to open meetings.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 54952 of the Government Code is amended to read:

54952. As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting

schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation or entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation or entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation or entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

CHAPTER 1135

An act to add Chapter 1.5 (commencing with Section 8623) to Part 2 of Division 13 of the Family Code, relating to adoptions.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Chapter 1.5 (commencing with Section 8623) is added to Part 2 of Division 13 of the Family Code, to read:

CHAPTER 1.5. ADOPTION FACILITATORS

8623. A person or organization is an adoption facilitator if the person or organization is not licensed as an adoption agency by the State of California and engages in either the following activities:

(a) Advertises for the purpose of soliciting parties to an adoption or locating children for an adoption or acting as an intermediary between the parties to an adoption.

(b) Charges a fee or other valuable consideration for services rendered relating to an adoption.

8624. Any advertising by an adoption facilitator shall:

(a) Identify the name of the party placing the advertisement and shall state that the party is an adoption facilitator.

(b) Be subject to Section 17500 of the Business and Professions Code.

(c) Provide, in any written advertisement, the disclosure required by subdivision (a) in print that is the same size and typeface as the name required pursuant to subdivision (a) or any telephone number specified in the advertisement, whichever is the larger print size.

(d) Provide the disclosure required by subdivision (a) in the same color as the most prominent print in the advertisement where the advertisement contains more than one color.

(e) Present the disclosure required by subdivision (a) in a readily understandable manner and at the same speed and volume, if applicable, as the rest of the advertisement if the advertisement is a television advertisement.

8625. An adoption facilitator shall not:

(a) Mislead any person into believing, or imply by any document, including any form of advertising or by oral communications, that the adoption facilitator is a licensed adoption agency.

(b) Represent to any person that he or she is able to provide services for which the facilitator is not properly licensed.

8626. An adoption facilitator shall disclose in the first oral communication in which there is a description of services, that the facilitator is not a licensed adoption agency.

8627. If the facilitator is acting on behalf of more than one party, all of the parties on whose behalf the facilitator is acting shall have signed a written agreement authorizing the facilitator to act on behalf of all of the parties.

8628. An adoption facilitator shall report in writing to the prospective adoptive parents all information that is provided to the facilitator by the birthparents concerning a particular child.

8629. For a period of 72 hours after signing a contract or after the payment of any fee, the birthparents or the prospective adoptive parents may revoke the contract and request the return of any fees paid, without penalty, except for any reasonable fees actually earned by the facilitator and which are supported by written records or documentation.

8630. The amount of fees paid to an adoption facilitator and any fees or expenses an adoption facilitator pays to a third party shall be reported to the court in the adoption accounting report as an adoption-related expense.

8631. All contracts entered into by an adoption facilitator shall be in writing and, at a minimum, shall include the following:

(a) A statement that the adoption facilitator is not licensed by the State of California as an adoption agency.

(b) A statement disclosing on whose behalf the facilitator is acting.

(c) A statement that the information provided by any party is not confidential but that this waiver of confidentiality shall only apply to the parties to the facilitation contract and any disclosures required by Chapter 7 (commencing with Section 9200) of Part 2 of Division 13.

(d) A statement that the adoption facilitator cannot provide any services for which the facilitator is not properly licensed, such as legal or therapeutic counseling.

(e) A list of all the services that the adoption facilitator is required to provide under the contract.

(f) Notice that for a period of 72 hours after signing the contract any party may revoke the contract, and if a fee has been paid by the prospective adoptive parents, they may, within that 72-hour period, request the return of the fees paid, except for any reasonable fee actually earned by the facilitator that is supported by written record or documentation.

8632. The adoption facilitator shall also explain the terms of the written contract verbally to the prospective adoptive parents and the birthparents.

8633. Any person or entity that violates this chapter is subject to a civil penalty of one thousand dollars ($1,000) or the amount of the contract fees, whichever is greater.

8634. Any contract entered into pursuant to this chapter is subject to the rules and remedies relating to contracts generally.

8635. In any action to revoke or enforce the contract, a prevailing party may recover reasonable attorneys' fees and costs.

8636. (a) Prior to engaging in the business of, or acting in the capacity of, an adoption facilitator, any person shall (1) obtain a business license in the appropriate jurisdiction, and (2) be bonded in the amount of ten thousand dollars ($10,000).

(b) The surety bond required by subdivision (a) shall be for the benefit of any person damaged by fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the adoption facilitator, or the agents, representatives, or employees of the adoption facilitator, while acting within the scope of that employment or agency.

8637. Notwithstanding the provisions of this chapter, an attorney who provides services specified in Section 8623 related to facilitating an adoption shall be subject only to those provisions of law regulating the practice of law.

8638. Any person aggrieved by any violation of this chapter may bring a civil action for damages, for rescission, or for any other civil or equitable remedy.

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 1136

An act to amend Sections 5000, 5015.6, 7810, 7815.5, 8000, 8005, 18602, and 18613 of the Business and Professions Code, relating to boards and commissions.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 5000 of the Business and Professions Code, as amended by Section 8 of Chapter 599 of the Statutes of 1995, is amended to read:

5000. There is in the Department of Consumer Affairs the State Board of Accountancy, which consists of 10 members, five of whom shall be certified public accountants, one of whom shall be a public accountant, and four of whom shall be public members who shall not be licentiates of the board or registered by the board. The board has the powers and duties conferred by this chapter.

The Governor shall appoint two of the public members, the five certified public accountant members, and the public accountant member qualified as provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member. In appointing the five certified public accountant members, the Governor shall appoint members representing a cross section of the accounting profession with at least one member representing a small public accounting firm. For the purposes of this chapter, a small public accounting firm shall be defined as a professional firm that employs a total of no more than four certified public accountants as partners, owners, or full-time employees in the practice of public accountancy within the State of California.

This section shall become operative on July 1, 1997, and shall become inoperative on July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2002, deletes or extends the dates on which this section becomes inoperative and is repealed. The repeal of this

section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 5015.6 of the Business and Professions Code is amended to read:

5015.6. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 7810 of the Business and Professions Code is amended to read:

7810. The State Board of Registration for Geologists and Geophysicists is within the department and is subject to the jurisdiction of the department. The board shall consist of eight members, five of whom shall be public members, two of whom shall be geologists, and one of whom shall be a geophysicist.

This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 4. Section 7815.5 of the Business and Professions Code is amended to read:

7815.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 8000 of the Business and Professions Code is amended to read:

8000. There is in the Department of Consumer Affairs a Court Reporters Board of California, which consists of five members, three of whom shall be public members and two of whom shall be holders of certificates issued under this chapter who have been actively engaged as shorthand reporters within this state for at least five years immediately preceding their appointment.

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 January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of

this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 6. Section 8005 of the Business and Professions Code is amended to read:

8005. The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other provisions of law.

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 January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 18602 of the Business and Professions Code is amended to read:

18602. There is in the Department of Consumer Affairs the State Athletic Commission, which consists of eight members. Six members shall be appointed by the Governor; one member shall be appointed by the Senate Rules Committee, and one member shall be appointed by the Speaker of the Assembly.

The members of the commission appointed by the Governor are subject to confirmation by the Senate pursuant to Section 1322 of the Government Code.

No person who is licensed under this chapter as a promoter, manager, or judge may be appointed or reappointed to, or serve on, the commission.

This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the commission subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 8. Section 18613 of the Business and Professions Code is amended to read:

18613. The commission shall appoint an executive officer and fix his or her compensation. The executive officer shall carry out the duties prescribed by this chapter and additional duties as may be delegated by the commission. The commission may employ in accordance with Section 154 other personnel as may be necessary for the administration of this chapter.

This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

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CHAPTER 1137

An act to amend Sections 5004, 5020, 5023, 5024, 5029, 7313, 7353, 7396, 7810, 7817, 7823, 8025, 18641, 18814, 19004, 19006, 19051, 19052, 19053, 19054, 19055, 19056, 19059, 19060.6, 19071, 19072, 19072.5, 19080, 19124, 19161, and 19170 of, to amend and repeal Section 18602 of, to add Sections 19008.1, 19008.2, 19011.1, and 19053.1 to, to add and repeal Chapter 14 (commencing with Section 22250) of Division 8 of, to repeal Sections 5005, 5020, 5023, 5025, 5029, 7814, 7824, 18612, 19057, 19058, and 19155 of, to repeal Chapter 20.6 (commencing with Section 9891) of Division 3 of, and to repeal Article 17 (commencing with Section 18890) of Chapter 2 of Division 8 of, the Business and Professions Code, to amend Section 1940.5 of the Civil Code, and to amend Section 69944 of the Government Code, relating to boards and commissions.

[Approved by Governor September 30, 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 that the State Board of Accountancy shall study and include in its report to the Legislature, as required by Section 101.1 of the Business and Professions Code, all of the following:

(a) The minimum standards for passage of the board's licensing examination.

(b) The relevance of the licensing examination to the practice of accountancy.

(c) The experience requirement to obtain a license from the board.

(d) The minimum standards for annual continuing education required by the board.

SEC. 2. Section 5004 of the Business and Professions Code is amended to read:

5004. The president, vice president, and secretary-treasurer shall be elected by the board for a term of one year from among its members at the time of the annual meeting. The newly elected president, vice president, and secretary-treasurer shall assume the duties of their respective offices at the conclusion of the annual meeting at which they were elected.

SEC. 3. Section 5005 of the Business and Professions Code is repealed.

SEC. 4. Section 5020 of the Business and Professions Code, as amended by Section 38 of Chapter 1275 of the Statutes of 1994, is amended to read:

5020. The board may, for the purpose of obtaining technical expertise, appoint an administrative committee of not more than 13

licensees, at least one of whom shall be a public accountant, to perform any of the following duties, and the committee may be vested with the powers of the board for those purposes:

(a) To receive and investigate complaints and to conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving the conduct of licensees.

(b) To receive and investigate complaints and to conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving any violation or alleged violation of this chapter by licensees.

(c) In exercising the duties prescribed in this section, the committee shall act only in an advisory capacity, shall have no authority to initiate any disciplinary action against a licensee, and shall only be authorized to report its findings from any investigation or hearing conducted pursuant to this section to the board, or upon direction of the board, to the executive officer.

SEC. 5. Section 5020 of the Business and Professions Code, as added by Section 5 of Chapter 1273 of the Statutes of 1994, is repealed.

SEC. 6. Section 5023 of the Business and Professions Code, as amended by Section 1 of Chapter 1278 of the Statutes of 1994, is amended to read:

5023. The board may establish an advisory committee of its own certified public accountant members or other certified public accountants of the state in good standing, to perform either of the following advisory duties:

(a) To examine all applicants for the license of certified public accountant.

(b) To recommend to the board applicants for the certified public accountant license who fulfill the requirements of this chapter.

SEC. 7. Section 5023 of the Business and Professions Code, as added by Section 7 of Chapter 1273 of the Statutes of 1994, is repealed.

SEC. 8. Section 5024 of the Business and Professions Code is amended to read:

5024. The board may create and appoint other advisory committees consisting of public accountants or certified public accountants of this state in good standing and who need not be members of the board for the purpose of making recommendations on matters as may be specified by the board.

SEC. 9. Section 5025 of the Business and Professions Code is repealed.

SEC. 10. Section 5029 of the Business and Professions Code, as amended by Section 9 of Chapter 1273 of the Statutes of 1994, is repealed.

SEC. 11. Section 5029 of the Business and Professions Code, as added by Section 10 of Chapter 1273 of the Statutes of 1994, is amended to read:

5029. The board may establish an advisory continuing education committee of nine members, six of whom shall be certified public accountants, two of whom shall be board members, one of whom is a public member of the board, and one of whom shall be a public accountant, to perform any of the following duties:

(a) To evaluate programs and advise the board as to whether they qualify under the regulations adopted by the board pursuant to subdivision (b) of Section 5027. Educational courses offered by professional accounting societies shall be accepted by the board as qualifying if the courses are approved by the committee as meeting the requirements of the board under the regulations.

(b) To consider applications for exceptions as permitted under Section 5028 and provide a recommendation to the board.

(c) To consider other advisory matters relating to the requirements of this article as the board may assign to the committee.

SEC. 12. Section 7313 of the Business and Professions Code is amended to read:

7313. (a) (1) To ensure compliance with the laws and regulations of this chapter, the board's executive officer and authorized representatives shall, except as provided by Section 159.5, have access to, and shall inspect, any establishment or mobile unit at any time in which barbering, cosmetology, or electrolysis are being performed. It is the intent of the Legislature that inspections be conducted on Saturdays and Sundays as well as weekdays, if collective bargaining agreements and civil service provisions permit.

(2) The board shall maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. The board or its authorized representatives shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement. The board shall not reduce the number of employees assigned to perform random inspections, targeted inspections, and investigations relating to field operations below the level funded by the annual Budget Act and described in supporting budget documents, and shall not redirect funds or personnel-years allocated to those inspection and investigation purposes to other purposes.

(b) To ensure compliance with health and safety requirements adopted by the board, the executive officer and authorized representatives shall, except as provided in Section 159.5, have access to, and shall inspect the premises of, all schools in which the practice of barbering, cosmetology, or electrolysis is performed on the public. Notices of violation shall be issued to schools for violations of regulations governing conditions related to the health and safety of patrons. Each notice shall specify the section violated and a timespan within which the violation must be corrected. A copy of the notice

of violation shall be provided to the Council for Private Postsecondary and Vocational Education.

(c) With prior written authorization from the board or its executive officer, any member of the board may enter and visit, in his or her capacity as a board member, any establishment, during business hours or at any time when barbering, cosmetology, or electrolysis is being performed. The visitation by a board member shall be for the purpose of conducting official board business, but shall not be used as a basis for any licensing disciplinary action by the board.

SEC. 13. Section 7353 of the Business and Professions Code is amended to read:

7353. Within 90 days after issuance of the establishment license, the board or its agents or assistants shall inspect the establishment for compliance with the applicable requirements of this chapter and the applicable rules and regulations of the board adopted pursuant to this chapter. The board shall maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. The board or its authorized representatives shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement. The board shall not reduce the number of employees assigned to perform random inspections, targeted inspections, and investigations relating to field operations below the level funded by the annual Budget Act and described in supporting budget documents, and shall not redirect funds or personnel-years allocated to those inspection and investigation purposes to other purposes.

SEC. 14. Section 7396 of the Business and Professions Code, as amended by Section 2 of Chapter 213 of the Statutes of 1992, is amended to read:

7396. The form and content of a license issued by the board shall be determined in accordance with Section 164.

The license shall prominently state that the holder is licensed as a barber, cosmetologist, esthetician, manicurist, electrologist, apprentice, barber instructor, or cosmetology instructor.

SEC. 15. Section 7810 of the Business and Professions Code is amended to read:

7810. The State Board of Registration for Geologists and Geophysicists is within the department and is subject to the jurisdiction of the department. Except as provided in this section, the board shall consist of eight members, five of whom shall be public members, two of whom shall be geologists, and one of whom shall be a geophysicist.

Each member shall hold office until the appointment and qualification of the member's successor or until one year has elapsed from the expiration of the term for which the member was

appointed, whichever occurs first. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the remainder of the unexpired term.

Each appointment shall be for a four-year term expiring June 1 of the fourth year following the year in which the previous term expired. No person shall serve as a member of the board for more than two consecutive terms.

The Governor shall appoint three of the public members and the three members qualified as provided in Section 7811. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies that occurred on or after January 1, 1983.

At the time the first vacancy is created by the expiration of the term of a public member appointed by the Governor, the board shall be reduced to consist of seven members, four of whom shall be public members, two of whom shall be geologists, and one of whom shall be a geophysicist. Notwithstanding any other provision of law, the term of that member shall not be extended for any reason, except as provided in this section.

This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 16. Section 7814 of the Business and Professions Code is repealed.

SEC. 17. Section 7817 of the Business and Professions Code is amended to read:

7817. Five members of the board shall constitute a quorum for the transaction of business; provided, however, that four members of the board shall constitute a quorum for the transaction of business when the board's membership is reduced to seven pursuant to Section 7810.

SEC. 18. Section 7823 of the Business and Professions Code is amended to read:

7823. The board shall have the authority to appoint committees as required or as deemed advisable to perform duties as the board may direct; provided, however, that the board shall not delegate any final decisionmaking authority to any committee that has as a member any person who is not a member of the board.

Membership on those committees is at the pleasure of the board.

No member of a committee shall receive any other compensation than his or her necessary expenses, as approved by the board, connected with the performance of his or her duties as a member of the committee.

SEC. 19. Section 7824 of the Business and Professions Code is repealed.

SEC. 20. Section 8025 of the Business and Professions Code is amended to read:

8025. A certificate issued under this chapter may be suspended or revoked, or certification may be denied, for one or more of the following causes:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of a certified shorthand reporter. The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction.

(b) Failure to notify the board of a conviction, in accordance with Section 8024 or Section 8024.2.

(c) Fraud or misrepresentation resorted to in obtaining a certificate hereunder.

(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetency in practice, or unprofessional conduct in the practice of shorthand reporting.

"Unprofessional conduct" includes, but is not limited to, acts contrary to professional standards concerning confidentiality; impartiality; filing and retention of notes; notifications, availability, delivery, execution and certification of transcripts; and any provision of law substantially related to the duties of a certified shorthand reporter.

(e) Repeated unexcused failure, whether or not willful, to transcribe notes of cases pending on appeal and to file the transcripts thereof within the time required by law or to transcribe or file notes of other proceedings within the time required by law or agreed by contract. Violation of this subdivision shall also be deemed an act endangering the public health, safety, or welfare within the meaning of Section 494.

(f) Loss or destruction of stenographic notes, whether on paper or electronic media, which prevents the production of a transcript, due to negligence of the licensee.

(g) Failure to comply with or to pay a monetary sanction imposed by any court for failure to provide timely transcripts.

(h) Violation of this chapter or the rules and regulations pertaining to certified shorthand reporters.

SEC. 21. Chapter 20.6 (commencing with Section 9891) of Division 3 of the Business and Professions Code is repealed.

SEC. 22. Section 18602 of the Business and Professions Code is amended to read:

18602. Except as provided in this section, there is in the Department of Consumer Affairs the State Athletic Commission, which consists of eight members. Six members shall be appointed by the Governor, one member shall be appointed by the Senate Rules Committee, and one member shall be appointed by the Speaker of the Assembly.

The members of the commission appointed by the Governor are subject to confirmation by the Senate pursuant to Section 1322 of the Government Code.

No person who is licensed under this chapter as a promoter, manager, or judge may be appointed or reappointed to, or serve on, the commission.

Upon the first expiration of the term of a member appointed by the Governor, the commission shall be reduced to seven members. Notwithstanding any provision of law, the term of that member shall not be extended for any reason.

This section shall become inoperative on July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, which becomes operative on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the commission subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 23. Section 18612 of the Business and Professions Code is repealed.

SEC. 24. Section 18641 of the Business and Professions Code is amended to read:

18641. The commission may license clubs to conduct, hold, or give, and shall license referees, judges, matchmakers, and timekeepers, and may license assistant matchmakers and corporation treasurers, to participate in, or be employed in connection with, professional or amateur boxing contests, sparring matches, or exhibitions.

No club may conduct, hold, or give, and no person performing tasks for which licensure is required by the commission may participate in, or be employed in connection with, those boxing contests, sparring matches, or exhibitions unless the club or person has been licensed for that purpose by the commission.

SEC. 25. Section 18814 of the Business and Professions Code is amended to read:

18814. The application and renewal fee for a timekeeper's license shall be fifty dollars ($50) unless the commission establishes a lower fee by regulation.

SEC. 26. Article 17 (commencing with Section 18890) of Chapter 2 of Division 8 of the Business and Professions Code is repealed.

SEC. 27. Section 19004 of the Business and Professions Code is amended to read:

19004. (a) "Bureau" refers to the Bureau of Home Furnishings and Thermal Insulation.

(b) "Chief" refers to the chief of the bureau.

(c) "Inspector" refers to an inspector either employed by, or under contract to, the bureau.

(d) "Director" refers to the Director of Consumer Affairs.

(e) "Department" refers to the Department of Consumer Affairs.

SEC. 28. Section 19006 of the Business and Professions Code is amended to read:

19006. "Upholstered furniture" means any furniture, including children's furniture, movable or stationary, which is made or sold with cushions or pillows, loose or attached, or is itself stuffed or filled in whole or in part with any material, is or can be stuffed or filled in whole or in part with any substance or material, hidden or concealed by fabric or any other covering, including cushions or pillows belonging to or forming a part thereof, together with the structural units, the filling material and its container and its covering which can be used as a support for the body of a human being, or his or her limbs and feet when sitting or resting in an upright or reclining position. This does not include furniture used exclusively for the purpose of physical fitness and exercise.

SEC. 29. Section 19008.1 is added to the Business and Professions Code, to read:

19008.1. "Used" means furniture that has been previously owned or used by another individual.

SEC. 30. Section 19008.2 is added to the Business and Professions Code, to read:

19008.2. "Antique" means furniture having special value because of its age, especially a work of art or handicraft that is over 100 years old.

SEC. 31. Section 19011.1 is added to the Business and Professions Code, to read:

19011.1. "Importer" means a person who manufactures or wholesales, through employees or agents, any article of upholstered furniture, bedding, or filling material manufactured outside of the United States for the purpose of sale or resale in California.

SEC. 32. Section 19051 of the Business and Professions Code is amended to read:

19051. Every upholstered-furniture retailer, unless he or she holds an importer's license, a furniture and bedding manufacturer's license, a wholesale furniture and bedding dealer's license, a custom upholsterer's license, or a retail furniture and bedding dealer's license shall hold a retail furniture dealer's license.

This section does not apply to a person whose sole business is designing and specifying for interior spaces, and who purchases specific amenable upholstered furniture items on behalf of a client, provided that the furniture is purchased from an appropriately licensed importer, wholesaler, or retailer. This section does not apply to a person who sells "used" and "antique" furniture as defined in Sections 19008.1 and 19008.2.

SEC. 33. Section 19052 of the Business and Professions Code is amended to read:

19052. Every custom upholsterer, unless he or she holds a furniture and bedding manufacturer's license, shall hold a custom upholsterer's license.

SEC. 34. Section 19053 of the Business and Professions Code is amended to read:

19053. Every upholstered-furniture wholesaler, bedding wholesaler, and upholstered-furniture and bedding wholesaler, unless he or she holds an importer's license, shall hold a wholesale furniture and bedding dealer's license.

SEC. 35. Section 19053.1 is added to the Business and Professions Code, to read:

19053.1. Every importer shall hold an importer's license.

SEC. 36. Section 19054 of the Business and Professions Code is amended to read:

19054. Every upholstered-furniture manufacturer, bedding manufacturer, upholstered-furniture and bedding manufacturer, or bedding renovator, unless he or she holds an importer's license, shall hold a furniture and bedding manufacturer's license.

SEC. 37. Section 19055 of the Business and Professions Code is amended to read:

19055. Every bedding retailer, unless he or she holds an importer's license, an upholstered-furniture and bedding manufacturer's license, a wholesale upholstered-furniture and bedding dealer's license, or a retail furniture and bedding dealer's license, shall hold a retail bedding dealer's license.

This section does not apply to a person whose sole business is designing and specifying for interior spaces, and who purchases specific amenable bedding items on behalf of a client, provided that the bedding is purchased from an appropriately licensed importer, wholesaler, or retailer.

SEC. 38. Section 19056 of the Business and Professions Code is amended to read:

19056. Every bedding renovator shall hold an upholstered-furniture and bedding manufacturer's license.

SEC. 39. Section 19057 of the Business and Professions Code is repealed.

SEC. 40. Section 19058 of the Business and Professions Code is repealed.

SEC. 41. Section 19059 of the Business and Professions Code is amended to read:

19059. Every supply dealer, unless he or she holds an upholstered-furniture and bedding manufacturer's license or an importer's license, shall hold a supply dealer's license.

SEC. 42. Section 19060.6 of the Business and Professions Code is amended to read:

19060.6. (a) Except as provided in subdivision (b), every person who, on his or her own account, advertises, solicits or contracts to manufacture, repair or renovate upholstered furniture or bedding, and who either does the work himself or herself or has others do it for him or her, shall obtain the particular license required by this chapter for the particular type of work that he or she solicits or

advertises that he or she will do, regardless of whether he or she has a shop or factory.

(b) Every person who, on his or her own account, advertises, solicits or contracts to repair or renovate upholstered furniture and who does not do the work himself or herself nor have employees do it for him or her but does have the work done by a licensed custom upholsterer need not obtain a license as a custom upholsterer but shall obtain a license as a retail furniture dealer. However, nothing in this section shall exempt a retail furniture dealer from complying with Sections 19162 and 19163.

SEC. 43. Section 19071 of the Business and Professions Code is amended to read:

19071. Secondhand bedding, or secondhand filling materials to be used or that could be used in bedding received from outside of this state shall comply with all the sanitization provisions of this chapter before it is accepted, sold or delivered, either directly or indirectly by any person.

SEC. 44. Section 19072 of the Business and Professions Code is amended to read:

19072. Responsibility for compliance with this chapter rests not only with the manufacturer but also with the importer, wholesaler, retailer, or any person having in his or her possession any article of upholstered furniture or bedding, or filling materials with intent to resell contrary to the provisions of this chapter.

SEC. 45. Section 19072.5 of the Business and Professions Code is amended to read:

19072.5. Importers, wholesalers, and retailers shall not sell or resell in California unlabeled upholstered furniture or bedding. Importers, wholesalers, and retailers shall obtain labels from the manufacturer of those articles and shall affix the labels before offering any upholstered furniture or bedding for sale. This does not include furniture used exclusively for the purpose of physical fitness and exercise.

SEC. 46. Section 19080 of the Business and Professions Code is amended to read:

19080. A person shall not, at wholesale, retail, or otherwise, directly or indirectly, make, repair, renovate, process, prepare, sell, offer for sale, display, or deliver any article of upholstered furniture or bedding, or any filling materials in prefabricated form or loose in bags or containers, unless such article or material is plainly and indelibly labeled. This does not include furniture used exclusively for the purpose of physical fitness and exercise.

SEC. 47. Section 19124 of the Business and Professions Code is amended to read:

19124. Every person who receives for sanitization any bedding filling material shall sanitize all those articles and material in accordance with the sanitization regulations.

SEC. 48. Section 19155 of the Business and Professions Code is repealed.

SEC. 49. Section 19161 of the Business and Professions Code is amended to read:

19161. All mattresses manufactured for sale in this state, including any mattress manufactured for sale for use in a hotel, motel, or other place of public accommodation in this state, shall be fire retardant. All seating furniture sold or offered for sale by an importer, manufacturer, or wholesaler for use in this state, including any seating furniture sold to or offered for sale for use in a hotel, motel, or other place of public accommodation in this state, and reupholstered furniture to which filling materials are added, shall be fire retardant and shall be labeled in a manner specified by the bureau. "Fire retardant," as used in this section, means a product that meets the regulations adopted by the bureau. This does not include furniture used exclusively for the purpose of physical fitness and exercise.

SEC. 50. Section 19170 of the Business and Professions Code is amended to read:

19170. (a) The fee imposed for the issuance and for the biennial renewal of each license granted under this chapter shall be set by the chief, with the approval of the director, at a sum not more nor less than that shown in the following table:

	Maximum fee	Minimum fee
Importer's license	$540	$120
Furniture and bedding manufacturer's license	540	120
Wholesale furniture and bedding dealer's license	540	120
Supply dealer's license	540	120
Custom upholsterer's license	360	80
Sanitizer's license	360	80
Retail furniture and bedding dealer's license	240	40
Retail furniture dealer's license	120	20
Retail bedding dealer's license	120	20

(b) A person who has paid the required fee and who is duly licensed as an upholstered-furniture and bedding manufacturer or a custom upholsterer under this chapter shall not be required to pay, in addition, the fee prescribed herein for a sanitizer's license.

(c) Individuals who, in their own homes and without the employment of any other person, make, sell, advertise, or contract to make pillows, quilts, quilted pads, or comforters are exempt from the

fee requirements imposed by subdivision (a). However, such individuals must comply with all other provisions of this chapter.

(d) Retailers who only sell "used" and "antique" furniture as defined in Sections 19008.1 and 19008.2 are exempt from the fee requirements imposed by subdivision (a). Those retailers are also exempt from the other provisions of this chapter.

(e) A person who makes, sells, or advertises upholstered furniture and bedding as defined in Sections 19006 and 19007, and who also makes, sells, or advertises furniture used exclusively for the purpose of physical fitness and exercise, shall comply with the fee requirements imposed by subdivision (a).

(f) It is the intent of the Legislature that upon the enactment of the amendments to this section, the two hundred twenty-four thousand dollars ($224,000) unallocated reduction proposed in the 1993–94 Governor's Budget shall be restored to the Bureau of Home Furnishings and Thermal Insulation Fund.

SEC. 51. Chapter 14 (commencing with Section 22250) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 14. TAX PREPARERS

22250. (a) A tax preparer shall maintain a bond issued by a surety company admitted to do business in this state for each individual preparing tax returns for another person. The principal sum of the bond shall be five thousand dollars ($5,000). A tax preparer subject to this section shall provide to the surety company proof of the following before a surety bond may be issued:

(1) That the individual is at least 18 years of age.

(2) A "certificate of completion" of instruction as required by subdivision (a) of Section 22255 and a "statement of compliance" of continuing education as required by subdivision (b) of Section 22255.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person or persons damaged by any fraud, dishonesty, misstatement, misrepresentation, deceit, or any unlawful acts or omissions by the tax preparer, or the tax preparers employed or associated with it to provide tax preparation services.

(c) The tax preparer filing the bond shall identify all tax preparers employed or associated with the tax preparer and shall provide for each employee or associate the evidence required by paragraphs (1) and (2) of subdivision (a) to the surety company. A tax preparer employed or associated with a tax preparer shall be covered by the bond of the tax preparer with which he or she is employed or associated. However, in no event shall the total bond required for any single tax preparer and the tax preparers employed or associated with it be required to exceed one hundred twenty-five thousand dollars ($125,000). The aggregate liability of the surety to any and all persons regardless of the number of claims against the bond or the

number of years the bond remains in force shall not exceed five thousand dollars ($5,000) for any one tax preparer. Any revision of the bond amount shall not be cumulative. The liability of the surety on the bond shall not include payment of any civil penalties, fines, attorneys' fees, or any other cost provided by statute or regulation.

(d) The tax preparer shall file an amendment to the bond within 30 days of a change in information contained in the bond, including a change in the tax preparers employed or associated with the tax preparer.

(e) (1) A tax preparer may not conduct business without having a current surety bond in the amount prescribed by this section.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to the tax preparer, identifying the bond and the date of cancellation or termination.

(3) If a tax preparer fails to obtain a new bond by the effective date of the cancellation or termination of the former bond, the tax preparer shall cease to conduct business until that time as a new surety bond is obtained.

(f) Notwithstanding Section 995.710 of the Code of Civil Procedure, a tax preparer may not make a deposit in lieu of bond.

(g) A tax preparer shall furnish evidence of the bond required by this section upon the request of any state or federal agency or any law enforcement agency.

22251. For the purposes of this chapter, the following words have the following meanings:

(a) (1) Except as otherwise provided in paragraph (2), "tax preparer" includes:

(A) A person who, for a fee, assists with or prepares tax returns for another person or who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who holds himself or herself out as offering those services. A person engaged in that activity shall be deemed to be a separate person for the purposes of this chapter, irrespective of affiliation with, or employment by, another tax preparer.

(B) A corporation, partnership, association, or other entity that has associated with it persons not exempted under Section 22258, which persons shall have as part of their responsibilities the preparation of data and ultimate signatory authority on tax returns or that holds itself out as offering those services or having that authority.

(2) Notwithstanding paragraph (1), "tax preparer" does not include an employee who, as part of the regular clerical duties of his or her employment, prepares his or her employer's income, sales, or payroll tax returns.

(b) "Tax return" means a return, declaration, statement, refund claim, or other document required to be made or filed in connection

with state or federal income taxes or state bank and corporation franchise taxes.

(c) An "approved curriculum provider," for purposes of basic instruction as described in subdivision (a) of Section 22255, and continuing education as described in subdivision (b) of Section 22255, is one who has been approved by the tax education council as defined in subdivision (d), or by the Council for Private Postsecondary and Vocational Education under Chapter 3 (commencing with Section 94300) of Part 59 of Division 10 of the Education Code. A curriculum provider who is approved by the tax education council is exempt from Chapter 3 (commencing with Section 94300) of Part 59 of Division 10 of the Education Code.

(d) A "tax education council" means a single organization made up of not more than one representative from each professional society, association, or other entity operating as a California nonprofit corporation which chooses to participate in the council and which represents tax preparers, enrolled agents, attorneys, or certified public accountants with a membership of at least 200 for the last three years, and not more than one representative from each for profit tax preparation corporation which chooses to participate in the council and which has at least 200 employees and has been operating in California for the last three years.

22252. Prior to rendering any tax preparation services, a tax preparer shall provide the customer in writing with the tax preparer's name, address, telephone number, and evidence of compliance with the bonding requirement of Section 22250, including the bond number, if any.

22253. It is a violation of this chapter for a tax preparer to do any of the following:

(a) Make, or authorize the making of, any statement or representation, oral or written or recorded by any means, which is intended to induce persons to use the tax preparation service of the tax preparer, which statement or representation is fraudulent, untrue, or misleading.

(b) Obtain the signature of a customer to a tax return or authorizing document which contains blank spaces to be filled in after it has been signed.

(c) Fail or refuse to give a customer, for his or her own records, a copy of any document requiring the customer's signature, within a reasonable time after the customer signs such document.

(d) Fail to maintain a copy of any tax return prepared for a customer for four years from the date of completion or the due date of the return, whichever is later.

(e) Engage in advertising practices which are fraudulent, untrue, or misleading, including, but not limited to, assertions that the bond required by Section 22250 in any way implies licensure or endorsement of a tax preparer by the State of California.

(f) Violate the provisions of Sections 17530.5.

(g) Violate the provisions of Section 7216 of Title 26 of the United States Code.

(h) Fail to sign a customer's tax return when payment for services rendered has been made.

(i) Fail to return, upon the demand by or on behalf of a customer and after payment for services rendered, records or other date provided to the tax preparer by the customer.

(j) Knowingly give false or misleading information to the consumer pursuant to Section 22252, or give false or misleading information to the surety company pursuant to subdivision (a) of Section 22250.

22254. A provider of tax preparer education for tax preparers shall meet standards and procedures as approved by the tax education council, or by the Council for Private Postsecondary and Vocational Education. The tax education council shall either approve or decline to approve providers of tax preparer education within 120 days of receiving a request for approval. If approval is not declined within 120 days, the provider shall be deemed approved. A listing of those providers approved by the tax education council shall be made available to tax preparers upon request.

22255. (a) The tax education council shall issue a "certificate of completion" to the tax preparer when the tax preparer demonstrates that he or she was previously registered with the Tax Preparer Program under the Department of Consumer Affairs, or has completed not less than 60 hours of instruction in basic personal income tax law, theory, and practice by an approved curriculum provider within the previous 18 months.

(b) A tax preparer shall complete on an annual basis not less than 20 hours of continuing education, including 12 hours in federal taxation, four hours in California taxation and an additional four hours in either federal or California taxation from an approved curriculum provider. The tax education council shall issue annually a "statement of compliance" when the tax preparer demonstrates that he or she has completed the required 20 hours of continuing education.

22256. (a) The superior court in and for the county in which any person acts as a tax preparer in violation of the provisions of this chapter, may, upon a petition by any person, issue an injunction or other appropriate order restraining the conduct. The proceedings under this paragraph shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(b) A person who violates a provision of this chapter is guilty of a misdemeanor, which offense is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both.

22257. (a) If a tax preparer fails to perform a duty specifically imposed upon him or her pursuant to this chapter, any person may maintain an action for enforcement of those duties or to recover a

civil penalty in the amount of one thousand dollars ($1,000), or for both enforcement and recovery.

(b) In an action to enforce these duties or to recover civil penalties, or for both enforcement and recovery, the prevailing plaintiff shall be entitled to reasonable attorney's fees and costs, in addition to the civil penalties provided under subdivision (a).

22258. The following persons are exempt from the requirements of this title:

(a) A person with a current and valid license issued by the State Board of Accountancy and his or her employees while functioning within the scope of their employment.

(b) A person who is an active member of the State Bar of California and his or her employees while functioning within the scope of their employment.

(c) An employee of any trust company or trust business as defined in Chapter 1 (commencing with Section 99) of Division 1 of the Financial Code while functioning within the scope of his or her employment.

(d) A financial institution regulated by the state or federal government, and employees thereof, insofar as the activities of the employees are related to their employment and the activities of the financial institution with respect to tax preparation are subject to federal or state examination or oversight.

(e) A person who is enrolled to practice before the Internal Revenue Service pursuant to Subpart A (commencing with Section 10.1) of Part 10 of Title 31 of the Code of Federal Regulations, and his or her employees while functioning within the scope of his or her employment.

22259. This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

This chapter shall become inoperative on July 1, 2002, and, as of January 1, 2003, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2003, deletes or extends that date on which it becomes inoperative and is repealed.

SEC. 52. Section 1940.5 of the Civil Code is amended to read:

1940.5. An owner or an owner's agent shall not refuse to rent a dwelling unit in a structure which received its valid certificate of occupancy after January 1, 1973, to an otherwise qualified prospective tenant or refuse to continue to rent to an existing tenant solely on the basis of that tenant's possession of a waterbed or other bedding with liquid filling material where all of the following requirements and conditions are met:

(a) A tenant or prospective tenant furnishes to the owner, prior to installation, a valid waterbed insurance policy or certificate of insurance for property damage. The policy shall be issued by a company licensed to do business in California and possessing a Best's Insurance Report rating of "B" or higher. The insurance policy shall be maintained in full force and effect until the bedding is

permanently removed from the rental premises. The policy shall be written for no less than one hundred thousand dollars ($100,000) of coverage. The policy shall cover, up to the limits of the policy, replacement value of all property damage, including loss of use, incurred by the rental property owner or other caused by or arising out of the ownership, maintenance, use, or removal of the waterbed on the rental premises only, except for any damage caused intentionally or at the direction of the insured, or for any damage caused by or resulting from fire. The owner may require the tenant to produce evidence of insurance at any time. The carrier shall give the owner notice of cancellation or nonrenewal 10 days prior to this action. Every application for a policy shall contain the information as provided in subdivisions (a), (b), and (c) of Section 1962 and Section 1962.5.

(b) The bedding shall conform to the pounds-per-square foot weight limitation and placement as dictated by the floor load capacity of the residential structure. The weight shall be distributed on a pedestal or frame which is substantially the dimensions of the mattress itself.

(c) The tenant or prospective tenant shall install, maintain and remove the bedding, including, but not limited to, the mattress and frame, according to standard methods of installation, maintenance, and removal as prescribed by the manufacturer, retailer, or state law, whichever provides the higher degree of safety. The tenant shall notify the owner or owner's agent in writing of the intent to install, remove, or move the waterbed. The notice shall be delivered 24 hours prior to the installation, removal, or movement. The owner or the owner's agent may be present at the time of installation, removal, or movement at the owner's or the owner's agent's option. If the bedding is installed or moved by any person other than the tenant or prospective tenant, the tenant or prospective tenant shall deliver to the owner or to the owner's agent a written installation receipt stating the installer's name, address, and business affiliation where appropriate.

(d) Any new bedding installation shall conform to the owner's or the owner's agent's reasonable structural specifications for placement within the rental property and shall be consistent with floor capacity of the rental dwelling unit.

(e) The tenant or prospective tenant shall comply with the minimum component specification list prescribed by the manufacturer, retailer, or state law, whichever provides the higher degree of safety.

(f) Subject to the notice requirements of Section 1954, the owner, or the owner's agent, shall have the right to inspect the bedding installation upon completion, and periodically thereafter, to insure its conformity with this section. If installation or maintenance is not in conformity with this section, the owner may serve the tenant with a written notice of breach of the rental agreement. The owner may

give the tenant three days either to bring the installation into conformity with those standards or to remove the bedding, unless there is an immediate danger to the structure, in which case there shall be immediate corrective action. If the bedding is installed by any person other than the tenant or prospective tenant, the tenant or prospective tenant shall deliver to the owner or to the owner's agent a written installation receipt stating the installer's name and business affiliation where appropriate.

(g) Notwithstanding Section 1950.5, an owner or owner's agent is entitled to increase the security deposit on the dwelling unit in an amount equal to one-half of one months' rent. The owner or owner's agent may charge a tenant, lessee, or sublessee a reasonable fee to cover administration costs. In no event does this section authorize the payment of a rebate of premium in violation of Article 5 (commencing with Section 750) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(h) Failure of the owner, or owner's agent, to exercise any of his or her rights pursuant to this section does not constitute grounds for denial of an insurance claim.

(i) As used in this section, "tenant" includes any lessee, and "rental" means any rental or lease.

SEC. 53. Section 69944 of the Government Code is amended to read:

69944. Until an official reporter of any court or official reporter pro tempore has fully completed and filed all transcriptions of his notes in any case on appeal which he is required by law to transcribe, he is not competent to act as official reporter in any court. Violation of subdivision (d) of Section 8025 of the Business and Professions Code shall also render an official reporter or official reporter pro tempore incompetent to act as official reporter in any court.

SEC. 54. Sections 21 and 51 of this act shall become operative on July 1, 1997.

SEC. 55. Notwithstanding any other provision of law, all assets remaining in the special fund of the Tax Preparers Program on the effective date of the repeal pursuant to Section 21 of this act shall be transferred to the Cemetery Fund as successor fund pursuant to Section 16346 of the Government Code.

SEC. 56. Sections 1 to 20, inclusive, Sections 22 to 50, inclusive, and Sections 52 and 53, shall not become operative unless SB 2031 of the 1995–96 Regular Session is also enacted and becomes operative.

SEC. 57. 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 1138

An act to amend Sections 213.5, 304, 362.4, 366.25, 366.3, and 11404.1 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or current or former member of the child's household from molesting, attacking, striking, sexually assaulting, or battering the child or any other child in the household; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child upon the same showing as is necessary under the provisions of this chapter relating to dependent children to remove a child from the custody and control of his or her parents or guardians; and (3) enjoining a parent, guardian, or current or former member of the child's household from specified behavior including contacting, threatening, or disturbing the peace of the child, which the court determines is necessary to effectuate orders under paragraph (1) or (2). In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this statute may be held simultaneously with the regularly scheduled hearings held in proceedings to declare a child a dependent child of the juvenile court pursuant to Section 300.

(b) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivision (a). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed one year, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(c) The juvenile court may issue an order made pursuant to subdivision (a) or (b) excluding a person from a residence or dwelling only when the evidence affirmatively shows facts sufficient for the court to ascertain that the person seeking the order has a right under color of law to possession of the premises.

In the case of the issuance of an ex parte order, the affidavit in support of the application for the order shall affirmatively show facts sufficient for the court to ascertain that the person seeking the order has a right under color of law to possession of the premises.

(d) Any order issued pursuant to subdivision (a) or (b) shall state on its face the date of expiration of the order.

(e) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a) or (b), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a) or (b) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(f) Any willful and knowing violation of any order granted pursuant to subdivision (a) or (b) shall be a misdemeanor punishable under Section 273.6 of the Penal Code.

SEC. 1.5. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or current or former member of the child's household from molesting, attacking, striking, sexually assaulting, or battering the child or any other child in the household; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining a parent, guardian, or current or former member of the child's household from specified behavior including contacting, threatening, or disturbing the peace of the child, which the court determines is necessary to effectuate orders under paragraph (1) or (2). In the case in which a temporary restraining order is granted without notice, the matter

shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this statute may be held simultaneously with the regularly scheduled hearings held in proceedings to declare a child a dependent child of the juvenile court pursuant to Section 300.

(b) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivision (a). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed one year, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(c) (1) The juvenile court may issue an order made pursuant to subdivision (a) or (b) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(d) Any order issued pursuant to subdivision (a) or (b) shall state on its face the date of expiration of the order.

(e) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a) or (b), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement

agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a) or (b) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(f) Any willful and knowing violation of any order granted pursuant to subdivision (a) or (b) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

SEC. 2. Section 304 of the Welfare and Institutions Code is amended to read:

304. After a petition has been filed pursuant to Section 311, and until the time that the petition is dismissed or dependency is terminated, no other division of any superior court may hear proceedings under Part 2 (commencing with Section 3020) of Division 8 of the Family Code regarding the custody of the child or proceedings under Part 2 (commencing with Section 1500) of Division 4 of the Probate Code regarding the establishment of a guardianship for the child, except as may otherwise be authorized in this code. During the referenced period of juvenile court jurisdiction, all issues regarding custody of the child shall be heard by the juvenile court. In deciding issues between the parents or between a parent and a guardian regarding custody of a child who is under the jurisdiction of the juvenile court, as described above, the juvenile court may review any records that would be available to the family law department of a superior court hearing such a matter. The juvenile court, on its own motion, may issue an order as provided in Section 213.5 or as described in Section 6218 of the Family Code. The Judicial Council shall adopt forms for these restraining orders. These form orders shall not be confidential and shall be enforceable in the same manner as any other order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code.

This section shall not be construed to divest the family law department of a superior court from hearing any issues regarding the custody of a child when that child is no longer under the jurisdiction of the juvenile court, as described above.

SEC. 3. Section 362.4 of the Welfare and Institutions Code is amended to read:

362.4. When the juvenile court terminates its jurisdiction over a child concerning whom a petition has been filed pursuant to Section 311 and who has not reached the age of 18 years, and proceedings for dissolution of marriage, for nullity of marriage, or for legal separation, of the child's parents, or proceedings to establish the paternity of the child brought under the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code, are pending in the superior court of any county, or an order has been entered with regard to the custody of that child, the juvenile court on its own motion, may issue a protective order, as provided in Section 213.5 of this code or as defined in Section 6218 of the Family

Code, and an order determining the custody of, or visitation with, the child.

Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. The order of the juvenile court shall be filed in the proceeding for nullity, dissolution, or legal separation, or in the proceeding to establish paternity, at the time the juvenile court terminates its jurisdiction over the child, and shall become a part thereof.

If no action is filed or pending relating to the custody of the child in the superior court of any county, the juvenile court order may be used as the sole basis for opening a file in the superior court of the county in which the parent, who has been given custody, resides. The court may direct the parent or the clerk of the juvenile court to transmit the order to the clerk of the superior court of the county in which the order is to be filed. The clerk of the superior court shall, immediately upon receipt, open a file, without a filing fee, and assign a case number.

The clerk of the superior court shall, upon the filing of any juvenile court custody order, send by first-class mail a copy of the order with the case number to the juvenile court and to the parents at the address listed on the order.

The Judicial Council shall adopt forms for any custody or restraining order issued under this section. These form orders shall not be confidential.

SEC. 4. Section 366.25 of the Welfare and Institutions Code is amended to read:

366.25. (a) In order to provide stable, permanent homes for children, a court shall, if the minor cannot be returned home pursuant to subdivision (e) of Section 366.2, conduct a hearing to make a determination regarding the future status of the minor no later than 12 months after the original dispositional hearing in which the child was removed from the custody of his or her parent, parents, or guardians, and in no case later than 18 months from the time of the minor's original placement pursuant to Section 319 or 16507.4 and periodically, but no less frequently than once each 12 months thereafter during the continuation of foster care. The hearing may be combined with the six months' review as provided for in Section 366. In the case of a minor who comes within subdivision (b) of Section 361.5 and for whom the court has found that reunification services should not be provided, a hearing shall be held pursuant to Section 361.5.

(b) Notice of the proceeding to conduct the review shall be mailed by the probation officer to the same persons as in an original proceeding, to the minor's present custodian, and to the counsel of record, by certified mail addressed to the last known address of the person to be notified, or shall be personally served on those persons not earlier than 30 days, nor later than 15 days prior to the date the review is to be conducted.

(c) Except in cases where permanency planning is conducted pursuant to Section 361.5, the court shall first determine at the hearing whether the minor should be returned to his or her parent or guardian, pursuant to subdivision (e) of Section 366.2. If the minor is not returned to the custody of his or her parent or guardian the court shall determine whether there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months. If the court so determines it shall set another review hearing for not more than six months, which shall be a hearing pursuant to this section.

(d) If the court determines that the minor cannot be returned to the physical custody of his or her parent or guardian and that there is not a substantial probability that the minor will be returned within six months, the court shall develop a permanent plan for the minor. In order to enable the minor to obtain a permanent home the court shall make the following determinations and orders:

(1) If the court finds that it is likely that the minor can or will be adopted, the court shall authorize the appropriate county or state agency to proceed to free the minor from the custody and control of his or her parents or guardians pursuant to Part 4 (commencing with Section 7800) of Division 12 of the Family Code unless the court finds that any of the following conditions exist:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing this relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The minor's foster parents, including relative caretakers, are unable to adopt the minor because of exceptional circumstances which do not include an unwillingness to accept legal responsibility for the minor, but are willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her foster parents would be seriously detrimental to the emotional well-being of the minor.

(2) If the court finds that it is not likely that the minor can or will be adopted or that one of the conditions in subparagraph (A), (B), or (C) of paragraph (1) applies, the court shall order the appropriate county department to initiate or facilitate the placement of the minor in a home environment that can be reasonably expected to be stable and permanent. This may be accomplished by initiating legal guardianship proceedings or long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is in a foster home and the foster parents, including relative caretakers, are willing and capable of providing a stable and permanent environment, the minor shall not be removed from the home if the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial

psychological ties to the foster parents. The court shall also make orders for visitation with the parents or guardians unless the court finds by a preponderance of evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(3) (A) If the court finds that it is not likely that the minor can or will be adopted, that there is no suitable adult available to become the legal guardian of the minor, and that there are no suitable foster parents except certified homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

(B) The licensed foster family agency shall only use a suitable licensed or other family home which has been certified by the agency as meeting licensing standards. When the care, custody, and control has been transferred to a foster family agency, it shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for support of the minor shall not in and of itself create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(C) Subsequent reviews for these minors shall be conducted every six months by the court. The licensed foster family agency shall be required to submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

(e) The proceeding for the appointment of a guardian for a minor who is a dependent child of the juvenile court shall be in the juvenile court. The court shall receive into evidence a report and recommendation concerning the proposed guardianship. The report shall include, but not be limited to, a discussion of all of the following:

(1) A social history of the proposed guardian, including screening for criminal records and prior referrals for child abuse or neglect.

(2) A social history of the minor, including an assessment of any identified developmental, emotional, psychological, or educational needs, and the capability of the proposed guardian to meet those needs.

(3) The relationship of the minor to the proposed guardian, the duration and character of the relationship, the motivation for seeking guardianship rather than adoption, the proposed guardian's

long-term commitment to provide a stable and permanent home for the minor, and a statement from the minor concerning the proposed guardianship.

(4) The plan, if any, for the natural parents for continued involvement with the minor.

(5) The proposed guardian's understanding of the legal and financial rights and responsibilities of guardianship.

The report shall be read and considered by the court prior to ruling on the petition for guardianship, and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding.

(f) Physical custody of a minor by his or her parents or guardians for insubstantial periods during the 12-month period prior to a permanency planning hearing shall not serve to interrupt the running of those periods.

(g) Notwithstanding any other provision of law, the application of any person who, as a foster parent, including relative caretakers, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the foster parent and removal from the foster parent would be seriously detrimental to the child's well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(h) Subsequent hearings need not be held if (1) the child has been freed for adoption and placed in the adoptive home identified in the previous hearing and is awaiting finalization of the adoption or (2) the child is the ward of a guardian.

(i) This section applies to minors adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 prior to January 1, 1989.

(j) An order by the court that authorizes the filing of a petition to terminate parental rights pursuant to Part 4 (commencing with Section 7800) of Division 12 of the Family Code or that authorizes the initiation of guardianship proceedings is not an appealable order but may be the subject of review by extraordinary writ.

SEC. 5. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360, 366.25, or 366.26, the court shall retain jurisdiction over the minor until the minor is adopted or the legal guardianship is established. The status of the minor shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the

adoption of the minor has been granted, the court shall terminate its jurisdiction over the minor. The court may continue jurisdiction over the minor as a dependent minor of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the minor as a ward of the guardianship established pursuant to Section 360, 366.25, or 366.26 and as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the minor.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the minor.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360, 366.25, or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the minor. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the minor, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the probation officer shall make any investigation he or she deems necessary to determine whether the minor may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the minor in another permanent placement. At the hearing, the parents may be considered as custodians but the minor shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the minor. The court may, if it is in the interests of the minor, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department or probation department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the minor and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the minor.

The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court 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 that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the minor is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the minor shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the minor's parents or guardians.

(2) Upon the request of the minor.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the minor and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

Unless their parental rights have been permanently terminated, the parent or parents of the minor are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the minor, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the minor. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

(f) At least every 12 months, during a review under subdivision (e), the court shall order that a hearing be held pursuant to Section 366.26. 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 no one is willing to accept legal guardianship, the court may, upon a determination that a hearing pursuant to Section 366.26 is therefore unnecessary, order that the minor remain in long-term foster care.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor.

SEC. 6. Section 11404.1 of the Welfare and Institutions Code is amended to read:

11404.1. In order to be eligible for AFDC-FC, the child shall receive a periodic review no less frequently than once every six months and a permanency planning hearing within 18 months of the original placement date and periodically but no less frequently than once each 12 months thereafter, as required throughout the period of foster care placement. Periodic reviews and permanency planning hearings shall not be required for a child who is residing with a nonrelated legal guardian.

SEC. 7. Section 1.5 of this bill incorporates amendments to Section 213.5 of the Welfare and Institutions Code proposed by both this bill and AB 2647. 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 213.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2647, in which case Section 1 of this bill shall not become operative.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

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

CHAPTER 1139

An act to amend Section 6380 of the Family Code, to add Section 273.65 to the Penal Code, and to amend Sections 213.5, 302, 304, 332, 361, 362, 362.1, 362.4, 16206, and 16208 of, and to add Section 218.5 to, the Welfare and Institutions Code, relating to domestic violence.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of

Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and

maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2. Section 273.65 is added to the Penal Code, to read:

273.65. (a) Any intentional and knowing violation of a protective order issued pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code 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.

SEC. 3. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a minor child a dependent child of the juvenile court, and until the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or member of the minor child's

household from molesting, attacking, striking, sexually assaulting, or battering the minor child or any other minor child in the household; (2) excluding any parent, guardian, or member of the minor child's household from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining a parent, guardian, or member of the minor child's household from specified behavior including contacting, threatening, or disturbing the peace of the minor, which the court determines is necessary to effectuate orders under paragraph (1) or (2). In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this statute may be held simultaneously with the regularly scheduled hearings held in proceedings to declare a minor a dependent child of the juvenile court pursuant to Section 300.

(b) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivision (a). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed one year, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(c) (1) The juvenile court may issue an order made pursuant to subdivision (a) or (b) excluding a person from a residence or dwelling. Such an order may be issued for the period of time and on the conditions the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(d) Any order issued pursuant to subdivision (a) or (b) shall state on its face the date of expiration of the order.

(e) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or

termination thereof, granted pursuant to subdivision (a) or (b), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the minor child and other locations where the court determines that acts of domestic violence or abuse against the minor child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a) or (b) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(f) Any willful and knowing violation of any order granted pursuant to subdivision (a) or (b) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

SEC. 3.5. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or current or former member of the child's household from molesting, attacking, striking, sexually assaulting, or battering the child or any other child in the household; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining a parent, guardian, or current or former member of the child's household from specified behavior including contacting, threatening, or disturbing the peace of the child, which the court determines is necessary to effectuate orders under paragraph (1) or (2). In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this statute may be held simultaneously with the regularly scheduled hearings held in proceedings to declare a child a dependent child of the juvenile court pursuant to Section 300.

(b) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivision (a). Any restraining order

granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed one year, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(c) (1) The juvenile court may issue an order made pursuant to subdivision (a) or (b) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(d) Any order issued pursuant to subdivision (a) or (b) shall state on its face the date of expiration of the order.

(e) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a) or (b), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a) or (b) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(f) Any willful and knowing violation of any order granted pursuant to subdivision (a) or (b) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

SEC. 4. Section 218.5 is added to the Welfare and Institutions Code, to read:

218.5. All counsel performing duties under this chapter, including, but not limited to, county counsel, court appointed counsel, or volunteer counsel, shall participate in mandatory training

on domestic violence where available through existing programs at no additional cost to the county. The training shall meet the requirements of Section 16206.

SEC. 5. Section 302 of the Welfare and Institutions Code is amended to read:

302. (a) A juvenile court may assume jurisdiction over a child described in Section 300 regardless of whether the child was in the physical custody of both parents or was in the sole legal or physical custody of only one parent at the time that the events or conditions occurred that brought the child within the jurisdiction of the court.

(b) Unless their parental rights have been terminated, both parents shall be notified of all proceedings involving the child. In any case where the probation officer is required to provide a parent or guardian with notice of a proceeding at which the probation officer intends to present a report, the probation officer shall also provide both parents, whether custodial or noncustodial, or any guardian, or the counsel for the parent or guardian a copy of the report prior to the hearing, either personally or by first-class mail. The probation officer shall not charge any fee for providing a copy of a report required by this subdivision. The probation officer shall keep confidential the address of any parent who is known to be the victim of domestic violence.

(c) When a minor is adjudged a dependent of the juvenile court, any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court, as specified in Sections 304, 361.2, and 362.4, so long as the minor remains a dependent of the juvenile court.

SEC. 6. Section 304 of the Welfare and Institutions Code is amended to read:

304. After a petition has been filed pursuant to Section 311, and until the time that the petition is dismissed or dependency is terminated, no other division of any superior court may hear proceedings pursuant to Part 2 (commencing with Section 3020) of Division 8 of the Family Code regarding the custody of the child or proceedings under Part 2 (commencing with Section 1500) of Division 4 of the Probate Code, except as otherwise authorized in this code, regarding the establishment of a guardianship for the child. While the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court. In deciding issues between the parents or between a parent and a guardian regarding custody of a minor who has been adjudicated a dependent of the juvenile court, the juvenile court may review any records that would be available to the domestic relations division of a superior court hearing such a matter. The juvenile court, on its own motion, may issue an order as provided for in Section 213.5, or as described in Section 6218 of the Family Code. The Judicial Council shall adopt forms for these restraining orders. These form orders shall not be confidential and shall be enforceable in the same manner as

any other order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code.

This section shall not be construed to divest the domestic relations division of a superior court from hearing any issues regarding the custody of a minor when that minor is no longer a dependent of the juvenile court.

SEC. 7. Section 332 of the Welfare and Institutions Code is amended to read:

332. A petition to commence proceedings in the juvenile court to declare a minor a ward or a dependent child 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 the subdivision under which the proceedings are instituted. If it is alleged that the minor is a person described by subdivision (e) of Section 300, the petition shall include an allegation pursuant to that section.

(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 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 is none, the adult relative residing nearest to the location of the court. If it is known to the petitioner that one of the parents is a victim of domestic violence and that parent is currently living separately from the batterer-parent, the address of the victim-parent shall remain confidential.

(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, of all of the following: (1) Section 903 makes 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 makes 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 or the parent by a private attorney or a public defender appointed pursuant

to the order of the juvenile court; (3) Section 903.2 makes 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.

SEC. 8. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child.

(b) No dependent child shall be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health of the minor or would be if the minor was returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.25 or 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(c) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (b), whether it was reasonable under the circumstances not to make any of those efforts. The court shall state the facts on which the decision to remove the minor is based.

(d) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parents or guardians and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 8.5. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child.

(b) No dependent child shall be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor was returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical

custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.25 or 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(c) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (b), whether it was reasonable under the circumstances not to make any of those efforts. The court shall state the facts on which the decision to remove the minor is based.

(d) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 9. Section 362 of the Welfare and Institutions Code is amended to read:

362. (a) When a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the minor. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the minor.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency has complied with that chapter.

(b) When a minor is adjudged a dependent child of the court, on the ground that the minor is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the minor subject to the supervision of the probation officer, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents or guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section, including orders to appear before a county financial evaluation officer. Such an order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. A foster parent or relative with whom the minor is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The

program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the minor is a person described by Section 300.

SEC. 10. Section 362.1 of the Welfare and Institutions Code is amended to read:

362.1. In order to maintain ties between the parent or guardian and any siblings and the minor, and to provide information relevant to deciding if, and when, to return a minor to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a minor in foster care, and ordering reunification services, shall provide as follows:

(a) For visitation between the parent or guardian and the minor. Visitation shall be as frequent as possible, consistent with the well-being of the minor. No visitation order shall jeopardize the safety of the minor. To protect the safety of the minor, the court may keep the minor's address confidential.

(b) For visitation between the minor and any siblings, or for the suspension of interaction between the minor and any siblings, pursuant to subdivision (b) of Section 16002, if the court notes in the order the reasons for its determination that sibling interaction is detrimental to the minor.

SEC. 11. Section 362.4 of the Welfare and Institutions Code is amended to read:

362.4. When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor's attainment of the age of 18 years, and proceedings for dissolution of marriage, for nullity of marriage, or for legal separation, of the minor's parents, or proceedings to establish the paternity of the minor child brought under the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code, are pending in the superior court of any county, or an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue a protective order as provided for in Section 213.5 or as defined in Section 6218 of the Family Code, and an order determining the custody of, or visitation with, the child.

Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. The order of the juvenile court shall be filed in the proceeding for nullity, dissolution, or legal separation, or in the proceeding to establish paternity, at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part thereof.

If no action is filed or pending relating to the custody of the minor in the superior court of any county, the juvenile court order may be used as the sole basis for opening a file in the superior court of the county in which the parent, who has been given custody, resides. The court may direct the parent or the clerk of the juvenile court to transmit the order to the clerk of the superior court of the county in

which the order is to be filed. The clerk of the superior court shall, immediately upon receipt, open a file, without a filing fee, and assign a case number.

The clerk of the superior court shall, upon the filing of any juvenile court custody order, send by first-class mail a copy of the order with the case number to the juvenile court and to the parents at the address listed on the order.

The Judicial Council shall adopt forms for any custody or restraining order issued under this section. These form orders shall not be confidential.

SEC. 12. Section 16206 of the Welfare and Institutions Code is amended to read:

16206. (a) The purpose of the program is to develop and implement statewide coordinated training programs designed specifically to meet the needs of county child protective service social workers assigned emergency response, family maintenance, family reunification, permanent placement, and adoption responsibilities. It is the intent of the Legislature that the program include training for other agencies under contract with county welfare departments to provide child welfare services. In addition, the program shall provide training programs for persons defined as mandated child abuse reporters pursuant to Sections 11165 and following of the Penal Code. The program shall provide the following services to the extent possible within the total allocation. If allocations are insufficient, the department, in consultation with the grantee or grantees and the Child Welfare Training Advisory Board, shall prioritize the efforts of the program, giving primary attention to the most urgently needed services. However, county child protective service social workers assigned emergency response responsibilities shall receive first priority for training pursuant to this act.

(b) The program shall provide practice-relevant training for mandated child abuse reporters and all members of the child welfare delivery system which will address critical issues affecting the well-being of children, and shall develop curriculum materials and training resources for use in meeting staff development needs of mandated child abuse reporters and child welfare personnel in public and private agency settings.

This training shall include all of the following:

(1) Crisis intervention.

(2) Investigative techniques.

(3) Rules of evidence.

(4) Indicators of abuse and neglect.

(5) Assessment criteria.

(6) Intervention strategies.

(7) Legal requirements of child protection, including requirements of child abuse reporting laws.

(8) Case management.

(9) Using community resources.

(10) Information regarding the dynamics and effects of domestic violence upon families and children.

The training may also include any or all of the following:

(1) Child development and parenting.

(2) Intake, interviewing, and initial assessment.

(3) Casework and treatment.

(4) Medical aspects of child abuse and neglect.

(c) Prior to January 1, 1989, the department shall provide the Legislative Analyst and the Select Committee on Children and Youth with a listing of the counties participating in the program, including the number of persons trained in each county.

(d) The training program shall assess the program's performance at least annually and forward it to the State Department of Social Services for an evaluation and report to the Legislative Analyst. The first report shall be forwarded to the Legislative Analyst no later than January 1, 1990, and on the first of January in any subsequent years. The assessment shall include at minimum the following:

(1) The number of persons trained.

(2) The type of training provided.

(3) The degree to which the training is perceived by participants as useful in practice.

(e) The training program shall provide practice-relevant training to county child protective service social workers who screen referrals for child abuse or neglect and for all workers assigned to provide emergency response, family maintenance, family reunification, and permanent placement services. The training shall be developed in consultation with the Child Welfare Training Advisory Board and domestic violence victims' advocates and other public and private agencies that provide programs for victims of domestic violence or programs of intervention for perpetrators.

SEC. 13. Section 16208 of the Welfare and Institutions Code is amended to read:

16208. (a) (1) The department, in consultation with the Child Welfare Training Advisory Board, shall contract with the University of California or the California State University system to develop a statewide protocol for telephone screening of emergency response referrals to protect children from abuse and neglect, to be called the Emergency Response Protocol. The department shall seek the advice of the California Children's Lobby in the development of this protocol.

(2) The Emergency Response Protocol shall incorporate written procedures for screening each referral of abuse or neglect to assess whether abuse of another family or household member is occurring. This additional domestic violence assessment and referral criteria shall be developed by the department in consultation with domestic violence victims' advocates, and other public and private agencies that provide programs for victims of domestic violence or programs

of intervention for perpetrators and the County Welfare Directors Association.

(b) The department shall utilize available child welfare training funds in the development of the protocol.

(c) The department shall incorporate the protocol into the child welfare training program described in this article no later than February 15, 1992.

SEC. 14. Section 3.5 of this bill incorporates amendments to Section 213.5 of the Welfare and Institutions Code proposed by both this bill and AB No. 2154. 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 213.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2154, in which case Section 3 of this bill shall not become operative.

SEC. 15. Section 8.5 of this bill incorporates amendments to Section 361 of the Welfare and Institutions Code proposed by both this bill and SB 1516. 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 361 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1516, in which case Section 8 of this bill shall not become operative.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution as a result of costs that may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, 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.

CHAPTER 1140

An act to amend Section 6380 of, and to add Section 6380.5 to, the Family Code, and to amend Section 836 of the Penal Code, relating to domestic violence.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding, the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service, any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.5. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement

Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also

be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2. Section 6380.5 is added to the Family Code, to read:

6380.5. (a) An out-of-state protective or restraining order issued by a state, tribal, or territorial court related to domestic or family violence shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe, or territory. There shall be a presumption of validity where an order appears authentic on its face.

(b) Any valid protective or restraining order related to domestic or family violence issued by a court of another state, tribe, or territory may be registered with a court of this state in order to be entered in the Domestic Violence Protective Order Registry established under this chapter.

(c) Any valid protective or restraining order related to domestic or family violence issued by a court of another state, tribe, or territory

shall be accorded full faith and credit by the courts of this state, and after entry into the Domestic Violence Protective Order Registry shall be enforced as if it had been issued in this state.

SEC. 3. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has reasonable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, or Section 136.2 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory, and the peace officer has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protective Order Registry maintained by the Department of Justice pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary

aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

SEC. 3.5. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has reasonable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, or Section 136.2 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was

present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a person commits an assault or battery upon his or her spouse, upon a person with whom he or she is cohabiting, or upon the parent of his or her child, a peace officer may arrest the person without a warrant where both of the following circumstances apply:

(1) The peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and AB 2647. 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 6380 of the Family Code, and (3) this bill is enacted after AB 2647, in which case Section 1 of this bill shall not become operative.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 836 of the Penal Code proposed by both this bill and AB 2116. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section 836 of the Penal Code, and (3) this bill is enacted after AB 2116, in which case Section 3 of this bill shall not become operative.

CHAPTER 1141

An act to amend Section 1250.8 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 1250.8 of the Health and Safety Code is amended to read:

1250.8. (a) Notwithstanding subdivision (a) of Section 437.10, the state department, upon application of a general acute care hospital which 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 which includes more than one physical plant maintained and operated on separate premises or which 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, which prescribe a single committee structure.

(4) Except as provided otherwise in this paragraph, the physical plants maintained and operated by the licensee which 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 which 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 which 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 Part 1.5 (commencing with Section 437) of Division 1.

(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 Part 1.5 (commencing with Section 437) of Division 1, a general acute care hospital which 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 437.10.

(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 437.10.

(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 Part 1.5 (commencing with Section 437) of Division 1, 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 Part 1.5 (commencing with Section 437) of Division 1.

(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 which 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 which 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 which 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 which 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 which 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, which 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.

(*l*) Notwithstanding any other provision of law, the director may issue a single consolidated license for a general acute care hospital to Children's Hospital Oakland and San Ramon Regional Medical Center.

SEC. 2. The Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution due to the unique circumstances of Children's Hospital Oakland and the San Ramon Medical Center. This act is necessary in order to enable Children's Hospital Oakland to operate a pediatric unit at San Ramon Regional Medical Center to provide pediatric medical services to infants and children in the San Ramon Valley, where such services are in high demand and are largely unavailable.

CHAPTER 1142

An act to amend Sections 457.1, 830.6, 830.8, 832.6, 12028, and 12032 of the Penal Code, and to amend Sections 28, 22651, 22651.2, 22651.3, 22652, 22655.5, and 22850.5 of the Vehicle Code, relating to peace officers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 457.1 of the Penal Code is amended to read:

457.1. (a) As used in this section, "arson" means a violation of Section 451 or 453.

(b) Upon a conviction of the offense of arson or attempted arson, or upon the discharge or parole of any person from the Department of the Youth Authority for the commission of the offense of arson or attempted arson, the court shall impose, in addition to any other penalty prescribed by law, a requirement that the person shall register with the chief of police of the city in which he or she resides, or with the sheriff of the county if he or she resides in an unincorporated area, and with the chief of police of the campus of the University of California or the California State University where the person is domiciled, if he or she is domiciled on campus or in any campus facility, within 30 days of coming into any county or city in which he or she expects to reside or is temporarily domiciled for at least 30 days.

(c) Any person required to register pursuant to this section who is discharged or paroled from a jail, prison, school, road camp, or other penal institution, or from the Department of the Youth Authority where he or she was confined because of the commission or attempted commission of arson, shall, prior to the discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement. The official shall require the person to read and sign the form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The official in charge of the place of confinement shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement shall give one copy of the form to the person, and shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release; one copy to the prosecuting agency that prosecuted the

person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall be transmitted in time so as to be received by the local law enforcement agency and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(d) The duty to register under this section for offenses adjudicated by a juvenile court shall cease 10 years after the adjudication of the offense for which the registration was required.

(e) All records relating specifically to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person required to register under this subdivision for offenses adjudicated by a juvenile court attains the age of 25 years or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code, whichever event occurs first. This subdivision shall not be construed to require the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by the court under Section 781 of the Welfare and Institutions Code.

(f) Any person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine shall, prior to the release or discharge, be informed of his or her duty to register under this section by the court in which he or she has been convicted, and the court shall require the person to read and sign the form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon his or her release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, and shall send two copies to the Department of Justice, which, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(g) The registration shall consist of (1) a statement in writing signed by the person, giving the information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the Department of Justice.

(h) If any person required to register by this section changes his or her residence address, he or she shall inform, in writing within 10 days, the law enforcement agency with whom he or she last registered of his or her new address. The law enforcement agency shall, within three days after receipt of the information, forward it to the Department of Justice. The Department of Justice shall forward

appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

(i) Any person required to register under this section who violates any of the provisions thereof is guilty of a misdemeanor. Any person who has been convicted of arson or attempted arson and who is required to register under this section who willfully violates any of the provisions thereof is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

(j) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the Board of Prison Terms, the Department of the Youth Authority, or the court, as the case may be, shall order the parole or probation of that person revoked.

(k) The statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(*l*) In any case in which a person who would be required to register pursuant to this section is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county, including, but not limited to, firefighting or disaster control, the local law enforcement agency having jurisdiction over the place or places where that assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person temporarily released under guard from the institution where he or she is confined.

(m) Nothing in this section shall be construed to conflict with Section 1203.4 concerning termination of probation and release from penalties and disabilities of probation.

A person required to register under this section may initiate a proceeding under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 and, upon obtaining a certificate of rehabilitation, shall be relieved of any further duty to register under this section. This certificate shall not relieve the petitioner of the duty to register under this section for any offense subject to this section of which he or she is convicted in the future.

SEC. 2. Section 830.6 of the Penal Code is amended to read:

830.6. (a) (1) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve police officer of a regional park district or of a transit district, a reserve park ranger, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve deputy of the Department of Fish

and Game, a reserve special agent of the Department of Justice, a reserve officer of a community service district which is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, a reserve officer of a school district police department under Section 35021.5 of the Education Code, or a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, and is assigned specific police functions by that authority, the person is a peace officer, if the person qualifies as set forth in Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph extends only for the duration of the person's specific assignment. A reserve park ranger or a transit, harbor, or port district reserve officer may carry firearms only if authorized by, and under those terms and conditions as are specified by, his or her employing agency.

(2) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve park ranger, a reserve police officer of a regional park district, transit district, or a school district, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve officer of a community service district that is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, or a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph includes the full powers and duties of a peace officer as provided by Section 830.1. A transit, harbor, or port district reserve police officer, or a city or county reserve peace officer who is not provided with the powers and duties authorized by Section 830.1, has the powers and duties authorized in Section 830.33, or in the case of a reserve park ranger, the powers and duties that are authorized in Section 830.31, and a school district reserve police officer has the powers and duties authorized in Section 830.32.

(b) Whenever any person designated by a Native American tribe recognized by the United States Secretary of the Interior is deputized or appointed by the county sheriff as a reserve or auxiliary sheriff or a reserve deputy sheriff, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by the county sheriff, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section

832.6. The authority of a peace officer pursuant to this subdivision includes the full powers and duties of a peace officer as provided by Section 830.1.

(c) Whenever any person is summoned to the aid of any uniformed peace officer, the summoned person is vested with the powers of a peace officer that are expressly delegated to him or her by the summoning officer or that are otherwise reasonably necessary to properly assist the officer.

SEC. 3. Section 830.8 of the Penal Code is amended to read:

830.8. (a) Federal criminal investigators and law enforcement officers are not California peace officers, but may exercise the powers of arrest of a peace officer in any of the following circumstances:

(1) Any circumstances specified in Section 836 or Section 5150 of the Welfare and Institutions Code for violations of state or local laws.

(2) When these investigators and law enforcement officers are engaged in the enforcement of federal criminal laws and exercise the arrest powers only incidental to the performance of these duties.

(3) When requested by a California law enforcement agency to be involved in a joint task force or criminal investigation.

(4) When probable cause exists to believe there is any public offense that involves immediate danger to persons or property.

In all of these instances, the provisions of Section 847 shall apply. These investigators and law enforcement officers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfied the training requirements of Section 832, or the equivalent thereof.

This subdivision does not apply to federal officers of the Bureau of Land Management. These officers have no authority to enforce California statutes without the written consent of the sheriff or the chief of police in whose jurisdiction they are assigned.

(b) Duly authorized federal employees who comply with the training requirements set forth in Section 832 are peace officers when they are engaged in enforcing applicable state or local laws on property owned or possessed by the United States government, or on any street, sidewalk, or property adjacent thereto, and with the written consent of the sheriff or the chief of police, respectively, in whose jurisdiction the property is situated.

(c) National park rangers are not California peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws provided these rangers are exercising the arrest powers incidental to the performance of their federal duties or providing or attempting to provide law enforcement services in response to a request initiated by California state park rangers to assist in preserving the peace and protecting state parks and other property for which California state park rangers are responsible. National park rangers, prior to the exercise of these arrest powers, shall have been

certified by their agency heads as having satisfactorily completed the training requirements of Section 832.3, or the equivalent thereof.

(d) Notwithstanding any other provision of law, during a state of war emergency or a state of emergency, as defined in Section 8558 of the Government Code, federal criminal investigators and law enforcement officers who are assisting California law enforcement officers in carrying out emergency operations are not deemed California peace officers, but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws. In these instances, the provisions of Section 847 and of Section 8655 of the Government Code shall apply.

SEC. 4. Section 832.6 of the Penal Code is amended to read:

832.6. (a) Every person deputized or appointed, as described in subdivision (a) of Section 830.6, shall have the powers of a peace officer only when the person is any of the following:

(1) (A) Deputized or appointed pursuant to paragraph (1) of subdivision (a) of Section 830.6 and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training prescribed by the Commission on Peace Officer Standards and Training. For the level I reserve officers appointed pursuant to this subparagraph after January 1, 1997, the basic training shall meet the minimum requirements established by the commission for deputy sheriffs and police officers. A law enforcement agency may request an exemption from this training requirement if the agency has policies approved by the commission limiting duties of level I reserve officers and these level I reserve officers satisfy other training requirements established by the commission. All level I reserve officers appointed pursuant to this subparagraph shall satisfy the continuing professional training requirement prescribed by the commission.

(B) A person deputized or appointed pursuant to paragraph (2) of subdivision (a) or subdivision (b) of Section 830.6 shall have the powers of a peace officer when assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training. Level I reserve officers appointed pursuant to this subparagraph shall satisfy the continuing professional training requirement prescribed by the commission.

(2) Assigned to the prevention and detection of crime and the general enforcement of the laws of this state while under the immediate supervision of a peace officer possessing a basic certificate issued by the Commission on Peace Officer Standards and Training, the person is engaged in a field training program approved by the

Commission on Peace Officer Standards and Training, and the person has completed the course required by Section 832 and any other training prescribed by the commission.

(3) Deployed and authorized only to carry out limited duties not requiring general law enforcement powers in their routine performance. Those persons shall be permitted to perform these duties only under the direct supervision of a peace officer possessing a basic certificate issued by the commission, and shall have completed the training required under Section 832 and any other training prescribed by the commission for those persons. Notwithstanding the provisions of this paragraph, a level III reserve officer may perform search and rescue, personnel administration support, community public information services, communications technician services, and scientific services, which do not involve direct law enforcement without supervision.

(4) Assigned to the prevention and detection of a particular crime or crimes or to the detection or apprehension of a particular individual or individuals while working under the supervision of a California peace officer in a county adjacent to the state border who possesses a basic certificate issued by the Commission on Peace Officer Standards and Training, and the person is a law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and has completed the basic training required for peace officers in his or her state.

This training shall fully satisfy any other training requirements required by law, including those specified in Section 832.

In no case shall a peace officer of an adjoining state provide services within a California jurisdiction during any period in which the regular law enforcement agency of the jurisdiction is involved in a labor dispute.

(b) Notwithstanding subdivision (a), a person who is issued a level I reserve officer certificate before January 1, 1981, shall have the full powers and duties of a peace officer as provided by Section 830.1 if so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, if the appointing authority determines the person is qualified to perform general law enforcement duties by reason of the person's training and experience. Persons who were qualified to be issued the level I reserve officer certificate before January 1, 1981, and who state in writing under penalty of perjury that they applied for but were not issued the certificate before January 1, 1981, may be issued the certificate before July 1, 1984. For purposes of this section, certificates so issued shall be deemed to have the full force and effect of any level I reserve officer certificate issued prior to January 1, 1981.

(c) In carrying out this section, the commission:

(1) May use proficiency testing to satisfy reserve training standards.

(2) Shall provide for convenient training to remote areas in the state.

(3) Shall establish a professional certificate for reserve officers as defined in paragraph (1) of subdivision (a) and may establish a professional certificate for reserve officers as defined in paragraphs (2) and (3) of subdivision (a).

(4) Shall facilitate the voluntary transition of reserve officers to regular officers with no unnecessary redundancy between the training required for level I and level II reserve officers.

(5) Shall develop a supplemental course for existing level I reserve officers desiring to satisfy the basic training course for deputy sheriffs and police officers.

(d) In carrying out paragraphs (1) and (3) of subdivision (c), the commission may establish and levy appropriate fees, provided the fees do not exceed the cost for administering the respective services. These fees shall be deposited in the Peace Officers' Training Fund established by Section 13520.

(e) The commission shall include an amount in its annual budget request to carry out this section.

SEC. 5. Section 12028 of the Penal Code is amended to read:

12028. (a) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any explosive substance, other than fixed ammunition, dirk, or dagger, as provided in Section 12020, the unlawful concealed carrying upon the person or within the vehicle of the carrier of any weapons in violation of Section 12025, and the unlawful possession or carrying of any item in violation of Section 653k is a nuisance.

(b) A firearm of any nature owned or possessed in violation of Section 12021, 12021.1, or 12101 or used in the commission of any misdemeanor as provided in this code, any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance. A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

(c) Any weapon described in subdivision (a), or, upon conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in subdivision (b) shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county or the chief of police of any campus of the University of California or the California State University or the Commissioner of the California Highway Patrol. For purposes of this subdivision, the Commissioner of the California Highway Patrol shall receive only weapons that

were confiscated by a member of the California Highway Patrol. The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officers in charge of them consider to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed pursuant to Section 12071 to engage in businesses involving any weapon purchased. If any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in such a manner as to constitute a nuisance pursuant to subdivision (a) or (b) without the prior knowledge of its lawful owner that it would be so used, it shall not be so offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon his or her identification of the weapon and proof of ownership.

(d) If, under this section, a weapon is not of the type that can be sold to the public, generally, or is not sold pursuant to subdivision (c), the weapon, in the month of July, next succeeding, or sooner, if necessary to conserve local resources including space and utilization of personnel who maintain files and security of those weapons, shall be destroyed so that it can no longer be used as such a weapon except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of it is necessary or proper to the ends of justice.

(e) This section does not apply to any firearm in the possession of the Department of Fish and Game or which was used in the violation of any provision of the Fish and Game Code or any regulation adopted pursuant thereto, or which is forfeited pursuant to Section 5008.6 of the Public Resources Code.

(f) No stolen weapon shall be sold or destroyed pursuant to subdivision (c) or (d) unless reasonable notice is given to its lawful owner, if his or her identity and address can be reasonably ascertained.

SEC. 6. Section 12032 of the Penal Code is amended to read:

12032. Notwithstanding any provision of law or of any local ordinance to the contrary, when any firearm is in the possession of any officer of the state, or of a county, city and county or city, or of any campus of the University of California or the California State University, and the firearm is an exhibit filed in any criminal action or proceeding which is no longer needed or is unclaimed or abandoned property, which has been in the possession of the officer for at least 180 days, the firearm shall be sold, or destroyed, as provided for in Section 12028.

This section shall not apply to any firearm in the possession of the Department of Fish and Game or which was used in the violation of any provision of law, or regulation thereunder, in the Fish and Game Code.

SEC. 7. Section 28 of the Vehicle Code is amended to read:

28. (a) Whenever possession is taken of any vehicle by or on behalf of any legal owner thereof under the terms of a security agreement or lease agreement, the person taking possession shall immediately notify by the most expeditious means available the city police department where the taking of possession occurred, if within an incorporated city, or the sheriff's department of the county where the taking of possession occurred, if outside an incorporated city, or the police department of a campus of the University of California or the California State University, if the taking of possession occurred on that campus, and shall within one business day forward a written notice to the city police or sheriff's department.

(b) Any person failing to notify the city police department, sheriff's department, or campus police department as required by this section is guilty of an infraction, and shall be fined a minimum of three hundred dollars ($300), and up to five hundred dollars ($500). The district attorney, city attorney, or city prosecutor shall promptly notify the Bureau of Security and Investigative Services of any conviction resulting from a violation of this section.

SEC. 8. Section 22651 of the Vehicle Code, as amended by Chapter 10 of the Statutes of 1996, is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more

than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known to have been issued five or more notices of parking violation, to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with

reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

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

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

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

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

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

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

(*l*) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are

erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

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

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

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

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

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

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

will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

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

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

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

SEC. 9. Section 22651.2 of the Vehicle Code is amended to read:

22651.2. (a) Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act when the vehicle is found upon a highway or any public lands, and if all of the following requirements are satisfied:

(1) Because of the size and placement of signs or placards on the vehicle, it appears that the primary purpose of parking the vehicle at that location is to advertise to the public an event or function on private property or on public property hired for a private event or function to which the public is invited.

(2) The vehicle is known to have been previously issued a notice of parking violation which was accompanied by a notice warning that an additional parking violation may result in the impoundment of the vehicle.

(3) The registered owner of the vehicle has been mailed a notice advising of the existence of the parking violation and that an additional violation may result in the impoundment of the vehicle.

(b) Subdivision (a) does not apply to a vehicle bearing any sign or placard advertising any business or enterprise carried on by or through the use of that vehicle.

(c) Section 22852 applies to the removal of any vehicle pursuant to this section.

SEC. 10. Section 22651.3 of the Vehicle Code is amended to read:

22651.3. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and

regulations, of a city, county, or jurisdiction of a state agency in which any vehicle, other than a rented vehicle, is located may remove the vehicle from an offstreet public parking facility located within the territorial limits in which the officer or employee may act when the vehicle is known to have been issued five or more notices of parking violation over a period of five or more days, to which the owner or person in control of the vehicle has not responded or when any vehicle is illegally parked so as to prevent the movement of a legally parked vehicle.

A notice of parking violation issued to a vehicle which is registered in a foreign jurisdiction or is without current California registration and is known to have been issued five or more notices of parking violation over a period of five or more days shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle.

(b) The vehicle may be impounded until the owner or person in control of the vehicle furnishes to the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located and furnishes satisfactory evidence that bail has been deposited for all notices of parking violation issued for the vehicle. In lieu of requiring satisfactory evidence that the bail has been deposited, the impounding law enforcement agency may, in its discretion, issue a notice to appear for the offenses charged, as provided in Article 2 (commencing with Section 40500) of Chapter 2 of Division 17. In lieu of either furnishing satisfactory evidence that the bail has been deposited or accepting the notice to appear, the owner or person in control of the vehicle may demand to be taken without unnecessary delay before a magistrate within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded.

(c) Evidence of current registration shall be produced after a vehicle has been impounded. At the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 may be issued to the owner or person in control of the vehicle, if the two days immediately following the day of impoundment are weekend days or holidays.

SEC. 11. Section 22652 of the Vehicle Code is amended to read:

22652. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried employee engaged in directing traffic or enforcing parking laws and regulations of a city, county, or jurisdiction of a state agency may remove any vehicle from a stall or space designated for physically handicapped persons pursuant to Section 22511.7 or 22511.8, located within the jurisdictional limits in which the officer or employee is authorized to act, if the vehicle is parked in violation of Section 22507.8 and if the police or sheriff's

department or the Department of the California Highway Patrol has been notified.

In a privately or publicly owned or operated offstreet parking facility, this section applies only to those stalls and spaces if the posting requirements under subdivisions (a) and (d) of Section 22511.8 have been complied with and if the stalls or spaces are clearly signed or marked.

SEC. 12. Section 22655.5 of the Vehicle Code is amended to read:

22655.5. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove a motor vehicle from the highway or from public or private property within the territorial limits in which the officer may act under the following circumstances:

(a) When any vehicle is found upon a highway or public or private property and a peace officer has probable cause to believe that the vehicle was used as the means of committing a public offense.

(b) When any vehicle is found upon a highway or public or private property and a peace officer has probable cause to believe that the vehicle is itself evidence which tends to show that a crime has been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a crime has been committed.

(c) Notwithstanding Section 3068 of the Civil Code or Section 22851 of this code, no lien shall attach to a vehicle removed under this section unless the vehicle was used by the alleged perpetrator of the crime with the express or implied permission of the owner of the vehicle.

(d) In any prosecution of the crime for which a vehicle was impounded pursuant to this section, the prosecutor may request, and the court may order, the perpetrator of the crime, if convicted, to pay the costs of towing and storage of the vehicle, and any administrative charges imposed pursuant to Section 22850.5.

(e) This section shall become operative on January 1, 1993.

SEC. 13. Section 22850.5 of the Vehicle Code is amended to read:

22850.5. (a) A city, county, or city and county, or a state agency may adopt an ordinance or resolution establishing procedures for the release of properly impounded vehicles and for the imposition of a charge equal to its administrative costs relating to the removal, impound, storage, or release of the vehicles. Those administrative costs may be waived by the local or state authority upon verifiable proof that the vehicle was reported stolen at the time the vehicle was removed.

(b) Administrative costs shall only be imposed on the registered owner or the agents of that owner and shall not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive, of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lienholder's total charges and proper administrative costs.

(c) Any administrative costs imposed shall be collected by the local or state authority at the time of release.

(d) The administration charges imposed pursuant to this section shall be in addition to any other charges authorized or imposed pursuant to this code.

SEC. 14. Nothing in this act shall prevent a city, county, or special district from providing public safety services to a Native American tribe through an agreement or contract.

SEC. 15. The Legislature hereby finds and declares that Section 2 of this act does not constitute a change in, but is declaratory of, existing law.

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 clarify as soon as possible the peace officer status of persons designated by a sovereign Native American tribe who are deputized by the county sheriff as reserve or auxiliary sheriffs or reserve deputy sheriffs, it is necessary that this act take effect immediately.

CHAPTER 1143

An act to amend Section 5000 of, to amend and renumber Sections 5002, 5003, and 5004 of, and to repeal Sections 5000.1, 5000.5, 5000.6, 5005, 5006, 5008, 5010, 5010.5, 5010.7, 5010.8, 5012, and 5012.5 of, the Education Code, to amend Sections 1000, 1002, 1100, 1200, 1201, 1202, 1302, 1303, 1500, 9117, 9225, 9310, 16400, 16464, 16500, 16501, 16502, 16503, 16520, 16521, 16540, 16700, and 16741 of, to amend and renumber Sections 2552, 6005, 6489, 6490, 10603, and 27312 of, to add Sections 1301, 1302.1, 1302.2, 1302.3, 1302.4, 1302.5, 1405, 1410, 1415, 10230, 10402.5, 10403.5, 10404.5, 10404.7, 10405.7, 10405.8, and 10603 to, and to add the heading of Division .5 (commencing with Section 1) to, to add the heading of Article 4 (commencing with Section 11381) to Chapter 4 of Division 11 of, to repeal and add Sections 1501 and 1502 of, and to repeal Sections 2601 and 16001 of, the Elections Code, to amend Section 36503 of, and to repeal Sections 36503.5, 36503.7, and 36504 of, the Government Code, to amend Section 6 of Chapter 920 of the Statutes of 1994, and to repeal the heading of Article 4 (commencing with Section 27340) of Division 16 of the Elections Code, as added by Section 5 of Chapter 79 of the Statutes of 1994, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 5000 of the Education Code is amended to read:

5000. After the initial election of governing board members in any school district or community college district, a governing board member election shall be held biennially on the first Tuesday after the first Monday in November of each succeeding odd-numbered year to fill the offices of members whose terms expire on the first Friday in December next succeeding the election. Except as provided in this chapter, or in Chapter 2 (commencing with Section 5200) , the elections shall be held and conducted in accordance with Chapter 3 (commencing with Section 5300).

SEC. 2. Section 5000.1 of the Education Code is repealed.

SEC. 3. Section 5000.5 of the Education Code is repealed.

SEC. 4. Section 5000.6 of the Education Code is repealed.

SEC. 5. Section 5002 of the Education Code is amended and renumbered to read:

35557. (a) Notwithstanding Section 5000, whenever, in a district that has been wholly absorbed into one or more other districts and continues in existence as a district until the reorganization in which it has been included is effective for all purposes and a governing board member election is otherwise required to be held prior to the effective date of the reorganization, no election shall be held. Instead, the county superintendent of schools shall appoint successors to the members whose terms expire on the first Friday in December following the date upon which the election would otherwise have been held. The appointees shall hold office until the reorganization becomes effective for all purposes.

(b) Subdivision (a) shall apply to any school district governed by a city board of education whenever the school district has been included with other school district territory within a unification effected pursuant to this chapter, where both of the following apply:

(1) The charter of the city involved requires an election of city school district governing board members to be held prior to the date the new unified district becomes effective for all purposes.

(2) The governing board of the new unified school district is organized to be subject to the provisions of this code rather than the provisions of the city charter.

SEC. 6. Section 5003 of the Education Code is amended and renumbered to read:

35558. (a) Notwithstanding Sections 35105 and 5000, in the case of a unified school district formed in an even-numbered year, where in connection with the formation of which the first governing board was elected in that even-numbered year, all of the members of the first elected governing board shall serve until the first Friday in December of the second succeeding odd-numbered year. Their successors shall be elected at an election conducted on the first

Tuesday after the first Monday in November of the second succeeding odd-numbered year. The majority of successors receiving the highest number of votes shall serve until the first Friday in December of the second odd-numbered year thereafter succeeding. The other members' terms shall expire on the first Friday in December of the first odd-numbered year thereafter succeeding.

(b) Notwithstanding subdivision (a), the governing board of a unified school district formed in an even-numbered year may provide, pursuant to an appropriate resolution adopted by the governing board, that the majority of the members of the governing board who received the highest number of votes in the first election of governing board members for the district shall serve until the first Friday in December of the third odd-numbered year succeeding that first election, and that the other members' terms shall expire on the first Friday in December of the second odd-numbered year succeeding that first election. The resolution described in this subdivision shall be adopted on or before March 15 of the second odd-numbered year succeeding the first election of the governing board.

SEC. 7. Section 5004 of the Education Code is amended and renumbered to read:

35559. Notwithstanding Sections 35105 and 5000, when the first elected board of any newly formed district is elected on the same date that the election is held for adopting the proposal for the formation of the new district and when the terms of several members of the first governing board would expire prior to the date on which the district becomes effective for all purposes, no election shall be held in November of that odd-numbered year, but the several members whose terms expire shall serve until April 30th of the next succeeding even-numbered year. A governing board election shall be held on the second Tuesday in April of that even-numbered year to fill the offices of such members whose terms expire on April 30th next succeeding the election. The terms of office of the members so elected shall expire on the first Friday in December of the second succeeding odd-numbered year. Their successors shall be elected pursuant to Section 5000.

SEC. 8. Section 5005 of the Education Code is repealed.

SEC. 9. Section 5006 of the Education Code is repealed.

SEC. 10. Section 5008 of the Education Code is repealed.

SEC. 11. Section 5010 of the Education Code is repealed.

SEC. 12. Section 5010.5 of the Education Code is repealed.

SEC. 13. Section 5010.7 of the Education Code is repealed.

SEC. 14. Section 5010.8 of the Education Code is repealed.

SEC. 15. Section 5012 of the Education Code is repealed.

SEC. 16. Section 5012.5 of the Education Code is repealed.

SEC. 17. A Division 0.5 heading is added immediately preceding Section 1 of the Elections Code, to read:

DIVISION 0.5. PRELIMINARY PROVISIONS

SEC. 17.5. The first Section 1000 of the Elections Code, as added by Section 2 of Chapter 920 of the Statutes of 1994, is amended to read:

1000. The established election dates in each year are as follows:

(a) The second Tuesday in April of each even-numbered year.

(b) The first Tuesday after the first Monday in March of each odd-numbered year.

(c) The fourth Tuesday in March in any year which is evenly divisible by the number four.

(d) The first Tuesday after the first Monday in June of each year.

(e) The first Tuesday after the first Monday in November of each year.

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. 18. The second Section 1000 of the Elections Code, as added by Section 2 of Chapter 920 of the Statutes of 1994, is amended to read:

1000. (a) The established election dates in each year are as follows:

(1) The second Tuesday of April in each even-numbered year.

(2) The first Tuesday after the first Monday in March of each odd-numbered year.

(3) The first Tuesday after the first Monday in June of each year.

(4) The first Tuesday after the first Monday in November of each year.

(b) This section shall become operative on January 1, 1998.

SEC. 19. Section 1002 of the Elections Code is amended to read:

1002. Except as provided in Section 1003, notwithstanding any other provisions of law, all state, county, municipal, district, and school district elections shall be held on an established election date.

SEC. 20. Section 1100 of the Elections Code is amended to read:

1100. No election shall be held on any day other than a Tuesday, nor shall any election be held on the day before, the day of, or the day after, a state holiday.

SEC. 21. Section 1200 of the Elections Code is amended to read:

1200. The statewide general election shall be held on the first Tuesday after the first Monday in November of each even-numbered year.

SEC. 22. The first Section 1201 of the Elections Code, as added by Section 2 of Chapter 920 of the Statutes of 1994, is amended to read:

1201. (a) The statewide direct primary shall be held on the first Tuesday after the first Monday in June of each even-numbered year.

(b) Notwithstanding subdivision (a), in any year that is evenly divisible by the number four, the statewide direct primary shall be held on the fourth Tuesday in March and shall be consolidated with the presidential primary held in that year.

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. 23. The second Section 1201 of the Elections Code, as added by Section 2 of Chapter 920 of the Statutes of 1994, is amended to read:

1201. The statewide direct primary shall be held on the first Tuesday after the first Monday in June of each even-numbered year.

This section shall become operative on January 1, 1998.

SEC. 24. Section 1202 of the Elections Code is amended to read:

1202. The presidential primary shall be held on the fourth Tuesday in March of any year evenly divisible by the number four.

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. 24.5. Section 1301 is added to the Elections Code, to read:

1301. (a) Except as required by Section 57379 of the Government Code, and except as provided in subdivision (b), a general municipal election shall be held on the second Tuesday in April of even-numbered years, or on the first Tuesday after the first Monday in March of odd-numbered years.

(b) (1) Notwithstanding subdivision (a), a city council may enact an ordinance, pursuant to Division 10 (commencing with Section 10000), requiring its general municipal election to be held on the same day as the statewide direct primary election, the day of the statewide general election, or on the day of school district elections as set forth in Section 1302. Any ordinance adopted pursuant to this subdivision shall become operative upon approval by the board of supervisors.

(2) In the event of consolidation, the general municipal election shall be conducted in accordance with all applicable procedural requirements of this code pertaining to that primary, general, or school district election, and shall thereafter occur in consolidation with that election.

(c) If a city adopts an ordinance described in subdivision (b), the municipal election following the adoption of the ordinance and each municipal election thereafter shall be conducted on the date specified by the city council, in accordance with subdivision (b), unless the ordinance in question is later repealed by the city council.

(d) If the date of a general municipal election is changed pursuant to subdivision (b), at least one election shall be held before the ordinance, as approved by the board of supervisors, may be subsequently repealed or amended.

SEC. 25. Section 1302 of the Elections Code is amended to read:

1302. (a) Except as provided in subdivision (b), the regular election to select governing board members in any school district, community college district, or county board of education shall be held on the first Tuesday after the first Monday in November of each odd-numbered year.

(b) (1) Notwithstanding any other provision of law, and except as provided in Section 1302.5, after the initial election of governing board members in any school district, community college district, or of members of a county board of education, the election of governing board members for the district or of members of the county board of education may be established, upon the adoption of an appropriate resolution by the governing board or the county board of education, respectively, to regularly occur on the same day as the statewide direct primary election, the statewide general election, or the general municipal election as set forth in Section 1301. The resolution shall become operative upon approval by the board of supervisors pursuant to Section 10404.5 or 10405.7, as applicable. If a school district, community college district, or county board of education is located in more than one county, the district may not consolidate an election if any county in which the district is located denies the request for consolidation.

(2) If the board of supervisors approves the resolution pursuant to Section 10404.5 or 10405.7, as applicable, the election of the governing board members of the school district or community college district or of members of the county board of education shall be conducted on the date specified by the board of supervisors, in accordance with paragraph (1), unless the approval is later rescinded by the board of supervisors.

(3) In the event of consolidation, the election of governing board members of the school district or community college district or of members of the county board of education shall be conducted in accordance with all applicable procedural requirements of the Elections Code pertaining to that primary, general, or municipal election, and shall thereafter occur in consolidation with that election.

(4) If the date of an election is changed pursuant to this section, at least one election shall be held before the resolution, as approved by the board of supervisors, may be subsequently repealed or amended.

SEC. 26. Section 1302.1 is added to the Elections Code, to read:

1302.1. In a community college district that includes the trustee areas authorized to be established pursuant to the second paragraph of Section 72022 of the Education Code, the consolidation of the election of trustees on the same date as the statewide general election pursuant to Section 1302 may be approved by any county or counties for the trustee areas located entirely within the county or counties. Approval by any county or counties in which the other trustee areas are located shall be deemed to meet the requirement of staggered terms set forth in Section 72022 of the Education Code.

SEC. 27. Section 1302.2 is added to the Elections Code, to read:

1302.2. (a) Notwithstanding any other provision of law, when an elementary, unified, high school, or community college district includes within its boundaries the same territory, or territory that is

in part the same, as a chartered city, the governing board member elections of the elementary, unified, high school, or community college district may be consolidated with the city election pursuant to Part 3 (commencing with Section 10400) of Division 10. The consolidation shall be effected by the officer conducting the election having jurisdiction of the elementary, unified, high school, or community college district, upon the written request of the governing board of the elementary, unified, high school, or community college district and with the written consent of the legislative body of the city. This section shall control in the event of any conflict with a prior order of the county superintendent of schools made pursuant to Section 5340 of the Education Code.

(b) When a high school district or community college district election is consolidated with that of a city pursuant to this section, and the high school district or community college district has within its boundaries component districts whose elections would otherwise be held on a date specified in this code, the elections in the component districts may be consolidated with the election in the high school district or community college district. The consolidation shall be effected by the officer conducting the election having jurisdiction of the component districts upon the written request of the governing boards thereof and with the written consent of the governing boards of the districts whose governing board member elections are to be consolidated with those of the component districts.

(c) Successors to incumbents holding office upon the effective date of this section, who in the absence of this section would have been elected at a different time, shall be chosen for office at the election nearest the time the terms of office of the incumbents would have otherwise expired. If an incumbent's term of office is extended because of this section, he or she shall hold office until a successor qualifies for the office, but in no event shall the term of an incumbent be extended to more than four years.

SEC. 28. Section 1302.3 is added to the Elections Code, to read:

1302.3. An annual election for members of the board of education shall be held in each unified district that is coterminous with or includes in its boundaries all or any portion of a chartered city or city and county the charter of which provides for a board of education, of five members with five-year terms, with the term of one member expiring each year. The election shall be held annually on the first Tuesday after the first Monday in November. The election shall be called by the county superintendent of schools and conducted in substantially the same manner as prescribed by Section 5000 of the Education Code.

SEC. 29. Section 1302.4 is added to the Elections Code, to read:

1302.4. Notwithstanding any other provision of law, a regular election for members of the Long Beach Community College District governing board may be held, upon the adoption of an appropriate resolution by the governing board, on the same date upon which the

election for members of the City Board of Education of the Long Beach Unified School District is held pursuant to the City Charter of the City of Long Beach and Article 3 (commencing with Section 5340) of Chapter 3 of the Education Code.

SEC. 30. Section 1302.5 is added to the Elections Code, to read:

1302.5. (a) Notwithstanding any other provision of law, upon recommendation of the county superintendent of schools and with the approval of the county board of supervisors, the election of governing board members of school districts whose boundaries are coterminous with the boundaries of the county, shall be consolidated with the November general election pursuant to Part 3 (commencing with Section 10400) of Division 10.

(1) The terms of members of the governing board elected pursuant to this section shall begin at noon on the first Monday after the first day in January following the general election and shall end at noon on the first Monday after the first day in January four years thereafter.

(2) The terms of members of the governing board expiring on March 31 of any odd-numbered year next succeeding any general election shall expire at noon on the first Monday after the first day in January following the general election.

(b) When the term of an incumbent expires at midnight on March 31 of an odd-numbered year and no successor has been elected because of the provisions of subdivision (a), the members of the board whose terms have not expired shall appoint a successor to serve until a successor is elected and qualifies pursuant to subdivision (a).

SEC. 31. Section 1303 of the Elections Code is amended to read:

1303. (a) Unless the principal act of a district provides that an election shall be held on one of the other dates specified in Chapter 1 (commencing with Section 1000) of Division 1, or except as provided in Section 1504, or except as provided in subdivision (b), a general district election to elect members of the governing board shall be held in each special district subject to Division 10 (commencing with Section 10000) on the first Tuesday following the first Monday in November of each odd-numbered year.

(b) Notwithstanding any other provision of law, a governing body of a special district may require, by resolution, that its elections of governing body members be held on the same day as the statewide general election. The resolution shall become operative upon the approval of the board of supervisors pursuant to Section 10404.

SEC. 32. Section 1405 is added to the Elections Code, to read:

1405. (a) Except as provided below, the election for a county, municipal, or district initiative that qualifies pursuant to Section 9116, 9214, or 9310 shall be held not less than 88 nor more than 103 days after the date of the order of election.

(1) In order that the election may be consolidated with the next regular or special election occurring wholly or partially within the

same territory the election may be conducted within 180 days following the order of election.

(2) To avoid holding more than one special election within any 180-day period, the date for holding the special election may be fixed later than 103 days but at as early a date as practicable after the expiration of 180 days from the last special election.

(b) The election for a county, municipal, or district initiative that qualifies pursuant to Section 9118, 9215, or 9311 shall be held at the jurisdiction's next regular election occurring not less than 88 days after the date of the order of election.

SEC. 33. Section 1410 is added to the Elections Code, to read:

1410. The election for a county or municipal referendum that qualifies pursuant to Section 9144 or 9237 shall be held at the jurisdiction's next regular election occurring not less than 88 days after the date of the order of election or at a special election called for that purpose not less than 88 days after the date of the order of election.

SEC. 34. Section 1415 is added to the Elections Code, to read:

1415. City or city and county charter proposals that qualify pursuant to Section 9255 shall be submitted to the voters at either the next regular general municipal election occurring not less than 88 days after the date of the order of election, or at a special election called for that purpose or on any established election date pursuant to Section 1000 occurring not less than 88 days after the date of the order of election.

SEC. 35. Section 1500 of the Elections Code is amended to read:

1500. If any election to choose members of the governing board of a special district is to be totally conducted by mailed ballot, it shall be held on the first Tuesday following the first Monday in September of each odd-numbered year. However, if permitted by the elections official of the county or counties affected by the use of all mailed ballots, the special district election may be held on the first Tuesday after the first Monday in November of each odd-numbered year. All other district elections conducted by mailed ballot may be held in accordance with the dates set forth in the district enabling act or may be consolidated with the general district election.

SEC. 36. Section 1501 of the Elections Code is repealed.

SEC. 37. Section 1501 is added to the Elections Code, to read:

1501. An election conducted pursuant to Section 1500 shall be held on a date prescribed therein, or on any other date other than an established election date.

SEC. 38. Section 1502 of the Elections Code is repealed.

SEC. 39. Section 1502 is added to the Elections Code, to read:

1502. No mailed-ballot election may be held on one of the established election dates set forth in Chapter 1 (commencing with Section 1000) of this division, except as provided in Section 1500.

SEC. 40. Section 2552 of the Elections Code, as amended by Chapter 146 of the Statutes of 1994, is amended and renumbered to read:

1202. The presidential primary shall be consolidated with the statewide direct primary held in any year evenly divisible by the number four.

This section shall become operative on January 1, 1998.

SEC. 41. Section 2601 of the Elections Code is repealed.

SEC. 42. Section 6005 of the Elections Code, as amended by Chapter 146 of the Statutes of 1994, is amended and renumbered to read:

6320. The chairperson of the state central committee shall notify the Secretary of State on or before the first day of February immediately preceding the presidential primary as to the number of delegates to represent the state in the next national convention of his or her party.

This section shall become operative on January 1, 1998.

SEC. 43. Section 6489 of the Elections Code is amended and renumbered to read:

333. "Nomination documents" means declaration of candidacy and nomination papers.

SEC. 44. Section 6490 of the Elections Code is amended and renumbered to read:

8020. (a) No candidate's name shall be printed on the ballot to be used at the direct primary unless the following nomination documents are delivered for filing to the county elections official:

(1) Declaration of candidacy pursuant to Section 8040.

(2) Nomination papers signed by signers pursuant to Section 8041.

(b) The forms shall first be available on the 113th day prior to the direct primary election and shall be delivered not later than 5 p.m. on the 88th day prior to the direct primary.

(c) Upon the receipt of an executed nomination document, the county elections official shall give the person delivering the document a receipt, properly dated, indicating that the document was delivered to the county elections official.

(d) Notwithstanding Section 8028, upon request of a candidate, the county elections official shall provide the candidate with a declaration of candidacy. The county elections official shall not require a candidate to sign, file, or sign and file, a declaration of candidacy as a condition of receiving nomination papers.

SEC. 45. Section 9117 of the Elections Code is amended to read:

9117. (a) When it is legally possible to hold a special election under this article within 180 days prior to a regular election, the board of supervisors may submit the proposed ordinance at that regular election instead of at a special election.

(b) In all other cases, the board of supervisors shall call a special election, to be held not less than 88 nor more than 103 days after the date of the presentation of the proposed ordinance to the board.

However, to avoid holding more than one election within any 180-day period, the date for holding the special election may be fixed later than 103 days after the date of the presentation of the proposed ordinance to the board, but at as early a date as practicable after the expiration of the 180-day period.

(c) Not more than one special election may be held pursuant to this article during any period of 180 days.

SEC. 45.5. Section 9225 of the Elections Code is amended to read:

9225. When a special election is to be called under this article, it shall be held not less than 88 nor more than 103 days after the date of the presentation of the proposed ordinance to the legislative body, and shall be held in accordance with this code. To avoid holding more than one special election within any 180-day period, the date for holding the special election may be fixed later than 103 days, but at as early a date as practicable after the expiration of 180 days from the last special election. When it is legally possible to hold a special election under this chapter within 180 days prior to a regular municipal election, the legislative body may submit the proposed ordinance at the regular election instead of at a special election.

SEC. 46. Section 9310 of the Elections Code is amended to read:

9310. (a) If the initiative petition is signed by voters not less in number than 10 percent of the voters in the district, where the total number of registered voters is less than 500,000, or not less in number than 5 percent of the voters in the district, where the total number of registered voters is 500,000 or more, and the petition contains a request that the ordinance be submitted immediately to a vote of the people at a special election, the district board shall do either of the following:

(1) Pass the ordinance, without alteration, either at the regular meeting at which it is presented, or within 10 days after it is presented.

(2) Immediately order that the ordinance be submitted to the voters, without alteration, at the next statewide election or at the next regular election date under Section 1000 whichever comes first, provided that the election occurs not less than 88 days after the order of the district board.

(b) Notwithstanding subdivision (a), nothing shall prohibit the board from calling a special election, to be held not less than 88 days nor more than 103 days after the date of the presentation of the proposed ordinance to the board. When it is legally possible to hold a special election under this chapter within 180 days prior to a regular election, the board may submit the proposed ordinance at the regular election instead of at a special election. Not more than one special election may be held pursuant to this article during any period of 180 days.

(c) The number of registered voters referred to in subdivision (a) shall be calculated as of the time of the last report of registration by the county elections official to the Secretary of State made prior to

publication or posting of the notice of intention to circulate the initiative petition.

SEC. 46.5. Section 10230 is added to the Elections Code, to read:

10230. If the date of a general municipal election is changed by municipal ordinance pursuant to subdivision (a) of Section 10403.5 or by charter, the period to file as a candidate for the general municipal election shall be the same as the nomination period to file as a candidate for the election in which the general municipal election is consolidated, notwithstanding Section 10220.

SEC. 47. Section 10402.5 is added to the Elections Code, to read:

10402.5. Any state, county, municipal, district, and school district election held on a statewide election date pursuant to Section 1002 shall be consolidated with the statewide election pursuant to this part except that, in counties of the first class, the board of supervisors may deny any request for consolidation if it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled. The procedural requirements prescribed for that type of election shall be construed as if this section were specifically set forth in the provisions relating to that election.

SEC. 48. Section 10403.5 is added to the Elections Code, to read:

10403.5. (a) (1) Any city ordinance requiring its general municipal election to be held on a day specified in subdivision (b) of Section 1301 shall be approved by the board of supervisors unless the ballot style, voting equipment, or computer capability is such that additional elections or materials cannot be handled. Prior to adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors shall each obtain from the elections official a report on the cost-effectiveness of the proposed action.

(2) A city, by itself or in concert with other cities, may purchase or otherwise contribute to the purchase of elections equipment, including, but not limited to, a computer for the purposes of conducting a consolidated election when the equipment shall be owned by the county.

(b) As a result of the adoption of an ordinance pursuant to this section, no term of office shall be increased or decreased by more than 12 months. As used in this subdivision, "12 months" means the period between the day upon which the term of office would otherwise have commenced and the first Tuesday after the second Monday in the 12th month before or after that day, inclusive.

(c) If an election is held on a day specified in subdivision (b) of Section 1301, and the election is consolidated with another election this part, except Section 10403, shall govern the consolidation and, if the county elections official is requested to conduct the municipal election, Section 10002 shall be applicable to that election.

(d) If a general municipal election is held on the same day as a statewide election, those city officers whose terms of office would have, prior to the adoption of the ordinance, expired on the Tuesday

succeeding the second Tuesday in April of an even-numbered year shall, instead, continue in their offices until not later than the fourth Tuesday after the day of the general municipal election, and until their successors are elected and qualified.

(e) Within 30 days after the ordinance becomes operative, the city elections official shall cause a notice to be mailed to all registered voters informing the voters of the change in the election date. The notice shall also inform the voters that as a result in the change in the election date, the terms of office of the elected city officeholders will be changed.

SEC. 49. Section 10404.5 is added to the Elections Code, to read:

10404.5. (a) A resolution of the governing board of a school district or county board of education to establish an election day pursuant to subdivision (b) of Section 1302 shall be adopted and submitted to the board of supervisors not later than 240 days prior to the date of the currently scheduled election of the district or for the members of the county board of education.

(b) The final date for the submission of the resolution by the governing board or county board of education to the board of supervisors is not subject to waiver.

(c) The board of supervisors shall notify all school districts and the county board of education located in the county of the receipt of the resolution to consolidate and shall request input from each district on the effect of consolidation.

(d) (1) The board of supervisors, within 60 days from the date of submission, shall approve the resolution unless it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled. Prior to the adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors shall each obtain from the elections official a report on the cost-effectiveness of the proposed action.

(2) Public notices of the proceedings in which the resolution is to be considered for adoption shall be made pursuant to Section 25151 of the Government Code.

(e) Within 30 days after the approval of the resolution by the board of supervisors, the elections official shall notify all registered voters of the districts affected by the consolidation of the approval of the resolution by the board of supervisors. The notice shall be delivered by mail and at the expense of the school district or if applicable, the county board of education.

(f) An election day established pursuant to subdivision (b) of Section 1302 shall be prescribed to occur not less than one month, nor more than 12 months, subsequent to the election day prescribed in Section 5000 of the Education Code or pursuant to Section 1007 of the Education Code, as appropriate. As used in this subdivision, "12 months" means the period from the election day prescribed in Section 5000 of the Education Code or pursuant to Section 1007 of the

Education Code, as appropriate, to the first Tuesday after the first Monday in the 12th month subsequent to that day, inclusive.

(g) In the event that the election day for a school district governing board or county board of education is established pursuant to subdivision (b) of Section 1302, the term of office of all then incumbent members of that governing board or county board of education shall be extended accordingly.

SEC. 50. Section 10404.7 is added to the Elections Code, to read:

10404.7. A school district in Tehama County or the Tehama County Board of Education, by itself or in concert with other school districts or county boards of education, may purchase or otherwise contribute to the purchase of elections equipment, including, but not limited to, a computer for the purposes of conducting a consolidated election when the equipment shall be owned by Tehama County.

SEC. 51. Section 10405.7 is added to the Elections Code, to read:

10405.7. (a) The resolution of the community college district governing board to establish an election day pursuant to subdivision (b) of Section 1302 shall be adopted and submitted to the board of supervisors not later than 240 days prior to the date of the currently scheduled election for the governing board members of the community college district.

(b) The final date for the submission of the resolution by the community college district governing board to the board of supervisors is not subject to waiver.

(c) The board of supervisors shall notify all community college districts located in the county of the receipts of the resolution to consolidate and shall request input from each district on the effect of consolidation.

(d) (1) The board of supervisors, within 60 days from the date of submission, shall approve the resolution unless it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled. Prior to the adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors shall each obtain from the elections official a report on the cost-effectiveness of the proposed action.

(2) Public notices of the proceedings in which the resolution is to be considered for adoption shall be made pursuant to Section 25151 of the Government Code.

(e) Within 30 days after the approval of the resolution by the board of supervisors, the elections official shall notify all registered voters of the districts affected by the consolidation of the approval of the resolution by the board of supervisors. The notice shall be delivered by mail and at the expense of the community college district.

(f) An election day established pursuant to subdivision (b) of Section 1302 shall be prescribed to occur not less than one month, nor more than 12 months, subsequent to the election day prescribed in Section 5000. As used in this subdivision, "12 months" means the

period from the election day prescribed in Section 5000 of the Education Code to the first Tuesday after the first Monday in the 12th month subsequent to that day, inclusive.

(g) If, pursuant to subdivision (b) of Section 1302, a district governing board member election is held on the same day as a statewide general election, those district governing board members whose four-year terms of office would have, prior to the adoption of the resolution, expired prior to that election shall, instead, continue in their offices until successors are elected and qualified.

SEC. 52. Section 10405.8 is added to the Elections Code, to read:

10405.8. In a community college district that includes the trustee areas authorized to be established pursuant to the third paragraph of Section 72023 of the Education Code, the consolidation of the election of trustees on the same date as the statewide general election pursuant to Section 10405.7 may be approved by any county or counties for the trustee areas located entirely within that county or counties. The approval of any county or counties in which the other trustee areas are located shall not be required. Elections resulting from changes in election dates pursuant to this section shall be deemed to meet the requirement of staggered terms set forth in Section 72023 of the Education Code.

SEC. 53. Section 10603 of the Elections Code is amended and renumbered to read:

10604. (a) Notwithstanding Section 10603, if a declaration of candidacy for an incumbent member of a school district or community college district governing board or of a county board of education is not filed by 5 p.m. on the 88th day before the election, any person, other than the person who was the incumbent on the 88th day, shall have until 5 p.m. on the 83rd day before an election to file a declaration of candidacy for the elective office.

(b) This section is not applicable where there is no incumbent eligible to be elected. If this section is applicable, notwithstanding Section 10603, a candidate whose declaration of candidacy has been filed for any school district or community college district governing board election or county board of education election may withdraw as a candidate until 5 p.m. on the 83rd day before the election.

SEC. 54. Section 10603 is added to the Elections Code, to read:

10603. (a) In any school district or community college district governing board election the name of any person shall be placed on the ballot, subject to Sections 35107 and 72103 of the Education Code, if there is filed with the county elections official having jurisdiction, not more than 113 days nor less than 88 days prior to the election, a declaration of candidacy containing the appropriate information in the blank spaces and signed by the person whose name is thereby to be placed on the ballot.

(b) No candidate whose declaration of candidacy has been filed for any school district or community college district governing board

election or county board of education election may withdraw as a candidate after the 88th day prior to the election.

(c) Notwithstanding any other provision of law, except as provided in subdivision (d), no person shall file nomination papers for more than one district office, including a county board of education office, at the same election.

(d) Notwithstanding any other provision of law, if a proposal to form a unified school district is on the same ballot as the election of governing board members of that district, any candidate for a position on the existing governing board may file nomination papers for that position pursuant to subdivision (a) and may, at the same election, also file nomination papers for a position on the governing board of the proposed unified school district.

SEC. 55. Section 16001 of the Elections Code is repealed.

SEC. 56. Section 16400 of the Elections Code is amended to read:

16400. When an elector contests any election he or she shall file with the clerk of the superior court having jurisdiction a written statement setting forth specifically:

(a) The name of the contestant and that he or she is an elector of the district or county, as the case may be, in which the contested election was held.

(b) The name of the defendant.

(c) The office.

(d) The particular grounds of contest and the section of this code under which the statement is filed.

(e) The date of declaration of the result of the election by the body canvassing the returns thereof.

SEC. 57. Section 16464 of the Elections Code is amended to read:

16464. At any time within three days after the filing of the affidavit of the contestant to the effect that he or she has sent by registered mail a copy of the affidavit to the defendant, the defendant may file with the clerk of the superior court an affidavit in his or her own behalf, setting up his or her desire to have the votes counted in any precincts, designating them, in addition to the precincts designated in the affidavit of the contestant, and setting up his or her grounds therefor. On the trial of the contest all of the precincts named in the affidavits of the contestant and the defendant shall be considered, and a recount had with reference to all of those precincts. The contestant shall have the same right to answer the affidavit of the defendant as is given to the defendant with reference to the affidavit of the contestant except that the contestant's answer shall be filed not later than the first day of the trial of the contest.

SEC. 58. Section 16500 of the Elections Code is amended to read:

16500. Within five days after the end of the time allowed for filing statements of contest, the clerk of the superior court shall notify the superior court of the county of all statements filed. The presiding judge shall forthwith designate the time and place of hearing, which

time shall be not less than 10 nor more than 20 days from the date of the order.

SEC. 59. Section 16501 of the Elections Code is amended to read:

16501. The clerk of the superior court shall thereupon issue a citation for the defendant to appear at the time and place specified in the order, which citation shall be delivered to the sheriff and served upon the party at least five days before the time so specified, by either of the following methods:

(a) Personally.

(b) If the party cannot be found, by leaving a copy at the house where he or she last resided.

SEC. 60. Section 16502 of the Elections Code is amended to read:

16502. The clerk of the superior court shall issue subpoenas for witnesses at the request of any party, which shall be served as other subpoenas. The superior court may issue attachments to compel the attendance of witnesses who have been subpoenaed to attend.

SEC. 61. Section 16503 of the Elections Code is amended to read:

16503. The contestant shall, in the first instance, be liable for the expenses involved in making any recount. He or she shall pay into court in advance each day a sum that the judge finds sufficient to pay all recount expenses that will have accrued by the end of that day. The sums paid shall be part of the costs. The elections official may pay each day the clerical assistants necessary for the recount from the amount advanced by the contestant without the necessity of the funds being first deposited with the county treasurer.

SEC. 62. Section 16520 of the Elections Code is amended to read:

16520. The clerk of the superior court, within five days after the end of the time for filing affidavits, shall present all the affidavits to the presiding judge of the superior court. The presiding judge shall forthwith designate the time and place of hearing, which shall be not less than 10 nor more than 20 days from the date of the order.

SEC. 63. Section 16521 of the Elections Code is amended to read:

16521. The clerk of the superior court, after an order setting a contest for trial, shall issue a citation to both parties containing a copy of the order. He or she shall deliver it to the sheriff who shall serve it either upon the parties or leave it at the residences named in the affidavits of registration of the parties.

SEC. 64. Section 16540 of the Elections Code is amended to read:

16540. On the fifth day after the end of the time for filing contestant's affidavit, the clerk of the superior court shall present the affidavits of the contestant and the defendant and proof of posting of contestant's affidavit to the presiding judge of the superior court, or anyone acting in his or her stead, who shall forthwith designate the time and place of hearing, the time for which shall be not less than 10 nor more than 20 days from the date of the order.

SEC. 65. Section 16700 of the Elections Code is amended to read:

16700. The person declared elected by the superior court is entitled to a certificate of election. If a certificate has not already

been issued to him or her, the elections official shall immediately make out and deliver to that person a certificate of election signed by him or her.

SEC. 66. Section 16741 of the Elections Code is amended to read:

16741. A certified copy of the judgment shall be served upon the elections official and may be enforced summarily in the same manner as provided in Section 13314.

SEC. 67. Section 27312 of the Elections Code is amended and renumbered to read:

11322. In addition to the material contained in Section 11320, the following shall appear on ballots at all recall elections, except at a landowner voting district recall election:

(a) The names of the candidates nominated to succeed the officer sought to be recalled shall appear under each recall question.

(b) Following each list of candidates, the ballot shall provide one blank line with a voting space to the right of it for the voter to write in a name not printed on the ballot.

SEC. 68. The heading of Article 4 (commencing with Section 27340) of Division 16 of the Elections Code, as added by Section 5 of Chapter 79 of the Statutes of 1994 is repealed.

SEC. 69. An Article 4 heading is added to Chapter 4 of Division 11 immediately preceding Section 11381 of the Elections Code, to read:

Article 4. Recall Elections

SEC. 70. Section 36503 of the Government Code is amended to read:

36503. Unless otherwise required by Section 57379, a general municipal election shall be held on a date prescribed by Section 1301 of the Elections Code. Except as otherwise provided in this title, all elective city offices shall be filled by the city electorate at a general municipal election. City officers holding elective city office shall hold office for their prescribed terms from the date of the installation of officers following adoption by the council of the official canvass of their election and until their successors are elected and qualified.

SEC. 71. Section 36503.5 of the Government Code is repealed.

SEC. 72. Section 36503.7 of the Government Code is repealed.

SEC. 73. Section 36504 of the Government Code is repealed.

SEC. 73.5. Section 6 of Chapter 920 of the Statutes of 1994 is amended to read:

Sec. 6. It is the intent of the Legislature that the tables set forth below indicating the derivation of the Elections Code sections as contained in Section 2 of this act, and the disposition of the provisions of the 1961 Elections Code, serve as a temporary guide to the Elections Code as enacted by this act.

The information contained in the tables set forth below is for informational purposes only, and shall not be construed as creating

any new right, power, duty, or other obligation, or as changing, limiting, or repealing any right, power, duty, or other obligation that existed on the effective date of this act.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
1	1	31	352	203	2022
2	2	32	351	204	2023
3	3	33	314	205	2024
4	4	34	313	206	2025
5	5	35	338	206.5	2026
6	6	36	337	207	2027
7	7	37	334	208	2028
8	353	38	329	209	2029
9	8	39	339	210	2030
10	310	40	319	211	2031
11	354	41	100	212	2032
12	335	41.5	101	214	346
13	311	42	102	215	2033
14	307	43	103	216	2034
15	320	44	104	217	2035
16	347	45	105	225	2050
17	321	47	9	226	2051
18	359	49	12	227	2052
19	318	50	14	228	2053
20	324	51	21000	300	2100
21	341	52	13	300.5	2101
22	340 [1]	53	106	301	2102
22	340 [2]	54	15450	302	2103
23	316 [1]	55	10	303	2104
23	316 [2]	58	11	304	2105
24	357	60	15	304.5	2106
25	328	70	200	305	2107
26	348	75	201	306	2108
27	356	100	2000	307	2109
28	327	200	349	308	2110
29	326	201	2020	309	2111
30	325	202	2021		

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
309.5	2112	509	2161	707.6	2209
310	2113	509.1	2162	707.7	2210
311	2114	509.3	2163	707.8	2211
311.5	2115	510	2164	708	2212
311.6	2116	511	2165	709	2213
312	2117	511.5	2166	800	2220
313	2118	512	2167	800.1	2221
315	2119	600	2180	800.2	2222
316	2120	601	2181	800.3	2223
318	2121	602	2182	801	2224
319	2122	603	2183	802	2225
320	2123	604	2184	803	2226
400	2135	604.5	305	804	2227
401	2136	605	2185	805	2228
402	2137	606	2186	825	2240
403	2138	607	2187	826	2241
404	2139	608	2188	827	2130
405	2140	609	2189	1000	300
406	2141	611	2190		320
407	2142	611.1	2191	1001	3000
408	2143	612	2192	1002	3001
500	2150	613	2193	1002.5	3002
501	2151	615	2194	1003	3003
502	2152	700	2200	1004	3004
503	2153	701	2201	1005	3005
503.5	2154	702	2202	1006	3006
504	2155	703	2203	1006.1	3007
505	2156	703.5	2204	1006.3	3008
506	2157	704	2205	1007	3009
507	2158	704.5	2206	1008	3010
507.5	2159	705	2207	1009	3011
508	2160	707.5	2208	1009.5	3012

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
1010	3013	1204	3106	1405	15005
1011	3014	1205	3107	1407	15006
1012	3015	1206	3108	1408	15007
1012.5	3016	1206.3	3109	1409	15008
1013	3017	1206.5	3110	1409.5	15009
1014	3018	1207	3111	1410	15010
1015	3019	1208	3112	1411	15011
1016	3020	1300	3300	1450	3200
1017	3021	1301	323	1451	3201
1018	3022	1302	3301	1452	3202
1019	3023	1303	3302	1453	3203
1100	322	1304	3303	1454	3204
1101	3400	1304.5	3304	1455	3205
1101.5	3401	1305	3305	1456	3206
1102	3402	1305.5	3306	1500	12200
1103	3403	1306	3307	1501	12220
1104	3404	1307	3308	1503	12260
1105	3405	1308	3309	1504	12283
1106	3406	1309	3310	1504.5	12282
1107	3407	1310	3311	1504.6	12284
1109	3408	1340	4000	1505	12223
1126	331	1340.5	4001 [5]	1506	12226
1127	3500	1341	4002	1507	12228
1128	3501	1350	4100	1508	12224
1129	3502	1351	4101	1508.5	12240
1130	3503	1352	4102	1509	12227
1200	3100	1353	4103	1510	12225
1201	3101	1400	15000	1511	12221
1202	3102	1401	15001	1513	12222
1202.1	3103	1402	15002	1513.1	12262
1202.3	3104	1403	15003	1514	12261
1203	3105	1404	15004		

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
1515	12325	1655	12312	3508	9009
1630	12301	2500	1000 [1]	3509	9010
1631	12304	2500	1000 [2]	3510	9011
1632	12305	2501	1001 [1]	3511	9012
1633	12302	2501	1001 [2]	3513	336
1634	12308	2502	1002	3514	9013
1635	12303	2503	1003	3515	9014
1636	12320	2520	1100	3515.1	9015
1637	12321	2550	1200	3516	9020
1637.5	12300	2551	1201 [1]	3517	9021
1638	12326	2551	1201 [2]	3519	9022
1638.5	12280	2552	1202 [1]	3520	9030
1638.7	12285	2552	1202 [2]	3521	9031
1639	12306	2553	12000	3522	9032
1640	12309	2600	1300	3523	9033
1641	12307	2601	1301	3523.1	9034
1642	12103	2602	1302	3524	9035
1642.3	12318	2603	1303	3525	9040
1642.9	12104	2604	1500	3526	9041
1643	12105	2650	1400	3527	9042
1643.3	12106	2651	10700	3528	9043
1644	12229	2652	10701	3529	9044
1645	12319	2653	12001	3530	9050
1646	12316	3500	9000	3531	9051
1647	12317	3501	9001	3532	9052
1648	12327	3502	9002	3533	9053
1649	12313	3502.05	9003	3559	9060
1650	12281	3503	9004	3560	9061
1651	12314	3504	9005	3561	9062
1652	12315	3505	9006	3562	9063
1653	12310	3506	9007	3563	9064
1654	12311	3507	9008		

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
3564	9065	3705	9110	3786	9166
3564.1	9066	3705.5	9111	3787	9167
3565	9067	3705.6	9112	3788	9168
3566	9068	3706	9113	3790	9180
3567	9069	3707	9114	3795	9190
3567.5	9080	3708	9115	4000	9200
3568	9081	3709	9116	4001	9201
3569	9082	3710	9117	4002	9202
3569.5	9083	3711	9118	4002.5	9203
3570	9084	3713	9119	4002.7	9204
3570.5	9085 [6]	3714	9120	4003	9205
3571	9086	3715	9121	4004	9206
3572	9087	3716	9122	4005	9207
3572.5	9088	3717	9123	4006	9208
3573	9089	3718	9124	4007	9209
3574	9090	3719	9125	4008	9210
3575	9091	3720	9126	4009	9211
3576	9092	3750	9140	4009.5	9212
3577	9093	3751	9141	4009.6	9213
3578	9094	3751.7	9142	4010	9214
3578.5	9095	3752	9143	4011	9215
3579	9096	3753	9144	4012	9216
3700	9100	3754	9145	4013	9217
3701	9101	3755	9146	4014	9218
3701.5	9102	3755.5	9147	4015	9219
3702	9103	3780	312	4015.5	9220
3702.1	9104	3781	9160	4016	9221
3702.5	9105	3782	9161	4017	9222
3702.7	9106	3783	9162	4018	9223
3703	9107	3784	9163	4019	9224
3704	9108	3785	9164	4020	9225
3704.5	9109	3785.1	9165		

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
4021	9226	5013	9282	5161	9322
4050	9235	5014	9283	5162	9323
4050.1	9236	5014.1	9284	5200	9340
4051	9237	5014.5	9285	5200.1	9341
4052	9238	5015	9286	5201	9342
4053	9239	5016	9287	5210	9360
4054	9240	5020	9290	5215	9380
4055	9241	5025	9295	5300	9400
4056	9242	5150	9300	5301	9401
4057	9243	5151	317	5302	9402
4058	9244	5151.5	308	5303	9403
4059	9245	5152	9301	5304	9404
4060	9246	5152.1	9302	5305	9405
4061	9247	5152.2	9303	5320	350
4080	9255	5152.3	9304	5321	9500
4081	9256	5152.4	9305	5322	9501
4082	9257	5152.5	9306	5323	9502
4083	9258	5152.6	9307	5324	9503
4084	9259	5153	9308	5325	9504
4085	9260	5153.5	9309	5326	9505
4086	9261	5154	9310	5327	9506
4087	9262	5154.3	9311	5328	9507
4088	9263	5156	9312	5329	9508
4089	9264	5156.5	9313	5330	9509
4090	9265	5156.6	9314	5350	9600
4091	9266	5157	9315	5351	9601
4093	9267	5157.2	9316	5352	9602
4094	9268	5157.5	9317	5353	9603
4095	9269	5157.6	9318	5354	9604
5010	306	5158	9319	5355	9605
5011	9280	5159	9320	5357	9606
5012	9281	5160	9321	5358	9607

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
6000	6300	6050	6954	6134	6564
6002	6301	6055	6420	6135	6565
6005	6320 [1]	6056	6421	6136	6566
6005	6320 [2]	6057	6422	6138	6567
6006	6321	6060	6440	6139	6568 [1]
6007	6322	6061	6441	6139	6568 [2]
6008	6323 [1]	6062	6442	6140	6580
6008	6323 [2]	6063	6443	6141	6581
6010	6340 [1]	6070	6460	6142	6582
6010	6340 [2]	6071	6461	6143	6583
6011	6341	6080	6480	6144	6584
6012	6342	6100	6500	6145	6585
6013	6343 [1]	6102	6501	6146	6586
6013	6343 [2]	6103	6502	6147	6587
6021	6360	6110	6520 [1]	6148	6588
6024	6361	6110	6520 [2]	6149	6589
6025	6362	6111	6521	6150	6590
6026	6363	6112	6522	6151	6591
6027	6364	6113	6523 [1]	6152	6592
6028	6365	6113	6523 [2]	6153	6593
6030	6380	6114	6524	6154	6594
6031	6381	6120	6540 [1]	6155	6595
6032	6382	6120	6540 [2]	6156	6596
6033	6383	6121	6541	6157	6597
6040	6400	6122	6542	6158	6598
6041	6401	6123	6543 [1]	6159	6599
6042	6402	6123	6543 [2]	6160	6953
6043	6403	6130	6560	6170	6620
6044	6404	6131	6561	6171	6621
6045	6405	6132	6562	6190	6640
6046	6406	6133	6563	6191	6641

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
6193	6642	6233	6763	6272	6822
6194	6643	6234	6764	6285	6840
6195	6644	6235	6765	6286	6841
6196	6645	6236	6766	6287	6842
6197	6646	6237	6767	6288	6843
6198	6647	6238	6768	6289	6844
6200	6700	6239	6769	6290	6845
6202	6701	6240	6780	6291	6846
6203	6702	6241	6781	6292	6847
6210	6720	6242	6782	6293	6848
6210.5	6721 [1]	6243	6783	6294	6849
6210.5	6721 [2]	6244	6784	6300	6000
6211	6722 [1]	6245	6785	6301	6001
6211	6722 [2]	6246	6786	6303	6002
6212	6723	6247	6787	6303.1	6003
6213	6724	6248	6788	6303.2	6004
6214	6725 [1]	6249	6789	6303.3	6005
6214	6725 [2]	6250	6790	6305	6020 [1]
6215	6726	6251	6791	6305	6020 [2]
6220	6740 [1]	6252	6792	6305.1	6021
6220	6740 [2]	6253	6793	6305.2	6022
6221	6741	6254	6794	6306	6023
6222	6742 [1]	6255	6795	6307	6024
6222	6742 [2]	6256	6796	6310	6040
6223	6743 [1]	6257	6797	6311	6041 [1]
6223	6743 [2]	6258	6798	6311	6041 [2]
6224	6744	6260	6951	6312	6042
6225	6745	6261	6952 [1]	6313	6043
6230	6760	6261	6952 [2]	6315	6060
6231	6761	6270	6820	6316	6061 [1]
6232	6762	6271	6821	6316	6061 [2]

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
6325	6080	6360	6180 [1]	6491	8040
6326	6081	6360	6180 [2]	6493	8060
6327	6082	6360.5	6950	6494	8041
6328	6083	6361.5	6181	6494.1	8061
6328.3	6084 [1]	6365	6200	6495	8062
6328.3	6084 [2]	6365.5	6201	6496	8063
6328.5	6085	6366	6202	6496.5	8064
6329	6086 [1]	6367	6203	6497	8065
6329	6086 [2]	6368	6204	6498	8042
6329.5	6087	6370	6220	6499	8066
6330	6100	6371	6221	6500	8067
6331	6101	6372	6222	6501	8068
6332	6102	6375	6240	6502	8069
6333	6103	6376	6241	6503	8102
6334	6104	6400	8000	6504	8080
6335	6105	6401	8001	6505	8070
6336	6106	6401.5	8002	6506	8081
6337	6107	6402	8003	6507	8082
6338	6108	6430	5100	6508	8083
6340	6120	6430.5	5101	6509	8021
6341	6121	6431	5102	6550	8100
6342	6122 [1]	6432	5200	6551	8101
6342	6122 [2]	6461	12100	6552	8103
6343	6123	6462	12101	6553	8104
6345	6140	6463	12102	6554	8105
6346	6141	6489	333	6555	8106
6347	6142	6490	8020	6555.5	8084
6348	6143	6490.1	8024	6556	8107
6349	6144	6490.2	8025	6580	8120
6350	6145	6490.3	8026	6580.5	8121
6351	6146	6490.4	8027		
6355	6160	6490.5	8028		

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS
DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
6581	8122	6803	8303	7302	8602
6582	8123	6804	8304	7303	8603
6583	8124	6810	8350	7304	8604
6584	8125	6831	8400	7310	8650
6610	15451	6831.1	8401	7311	8651
6611	8140	6832	8402	7312	8652
6612	8141	6833	8403	7313	8653
6613	8142	6834	8404	8000	7000
6614	8143	6834.1	8405	8500	7050
6614.5	8144	6835	8406	8510	7100
6615	8145	6836	8407	8660	7150
6616	8146	6837	8408	8660.1	7151
6617	8147	6838	8409	8660.2	7152
6618	8148	6860	8450	8660.3	7153
6619	8149	6861	8451	8661	7154
6620	8150	6862	8452	8662	7155
6650	8800	6863	8453	8663	7156
6651	8801	6864	8454	8664	7157
6651.5	8802	6890	8500	8665	7158
6653	8803	6891	8501	8666	7159
6653.3	8804	6892	8502	8667	7160
6654	8805	6893	8503	8668	7161
6655	8806	6894	8504	8669	7162
6656	8807	6920	8550	8670	7163
6657	8808	7200	10702	8671	7164
6658	8809	7200.5	10703	8672	7165
6659	8810	7201	10704	8673	7166
6660	8811	7202	10705	8674	7167
6661	8605	7203	10706	8675	7168
6800	8300	7204	10707	8676	7169
6801	8301	7300	8600	8677	7170
6802	8302	7301	8601	8678	7171

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
8711	7180	8871	7226	9241	7377
8740	7185	8872	7227	9242	7378
8740.5	7186	8873	7228	9243	7379
8741	7187	8874	15460	9270	7380
8744	7188	8875	7229	9271	7381
8770	7190	8923	7235	9272	7382
8771	7191	8940	7240	9273	7383
8772	7192	8941	7241	9274	7384
8773	7193	8942	7242	9276	7385
8774	7194	8943	7243	9277	7386
8775	7195	8944	7244	9278	7387
8776	7196	9000	7250	9279	7388
8777	7197	9010	7300	9280	7389
8778	7198	9160	7350	9320	7400
8820	7200	9160.5	7351	9321	7401
8820.5	7201	9160.7	7352	9322	7402
8821	7202	9160.8	7353	9323	7403
8822	7203	9160.9	7354	9324	7404
8823	7204	9161	7355	9325	7405
8823.5	7205	9161.5	7356	9326	7406
8824	7206	9162	7357	9327	7407
8825	7207	9163	7358	9328	7408
8826	7208	9164	7359	9329	7409
8827	7209	9165	7360	9330	7410
8828	7210	9166	7361	9331	7411
8829	7211	9167	7362	9332	7412
8830	7212	9168	7363	9333	7413
8831	7213	9169	7364	9334	7414
8832	7214	9170	7365	9370	7420
8833	7215	9171	7366	9371	7421
8834	7216	9240	7375	9372	7422
8870	7225	9240.5	7376	9373	7423

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
9374	15470	9618	7561	9683	7638
9375	7424	9620	7570	9684	7639
9422	7430	9630	7575	9685	7640
9423	7431	9631	7576	9686	7641
9440	7440	9632	7577	9687	7642
9441	7441	9633	7578	9688	7643
9442	7442	9634	7579	9689	7644
9443	7443	9635	7580	9690	7645
9444	7444	9640	7600	9700	7650
9500	7460	9640.1	7601	9701	7651
9501	7461	9640.2	7602	9702	7652
9502	7462	9641	7603	9703	7653
9503	7463	9642	7604	9704	7654
9504	7464	9643	7605	9705	7655
9505	7465	9644	7606	9706	7656
9506	7466	9645	7607	9707	7657
9507	7467	9646	7608	9708	7658
9508	7468	9647	7609	9709	7659
9509	7469	9648	7610	9710	7660
9510	7470	9649	7611	9711	7661
9600	7500	9650	7612	9720	7670
9610	7550	9651	7613	9721	7671
9611	7551	9652	7614	9722	7672
9611.5	7552	9660	7620	9723	7673
9611.6	7553	9661	7621	9724	15480
9611.7	7554	9670	7625	9725	7674
9612	7555	9670.5	7626	9730	7680
9613	7556	9671	7627	9731	7681
9614	7557	9672	7628	9732	7682
9615	7558	9680	7635	9733	7683
9616	7559	9681	7636	9740	7690
9617	7560	9682	7637	9741	7691

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
9742	7692	9793	7804	9950	7844
9743	7693	9794	7805	9551	5000
9744	7694	9801	7820	9952	5001
9745	7695	9810	7830	9953	5002
9750	7700	9811	7831	9954	5003
9760	7750	9812	7832	9955	5004
9761	7751	9813	7833	9956	5005
9762	7752	9814	7834	10000	5006
9763	7753	9815	7835	10000	13001 [3]
9764	7754	9816	7836	10001	13001 [4]
9765	7755	9816.5	7837	10001.5	13002
9770	7770	9817	7838	10002	13003
9771	7771	9819	7839	10002.5	13004
9772	7772	9820	7840	10003	13005
9773	7773	9821	7841	10004	13006
9774	7774	9822	7842	10005	13007
9775	7775	9823	7843	10006	13000
9776	7776	9831	7850	10007	13200
9777	7777	9832	7851	10008	13300
9779	7778	9833	7852	10009	13301
9780	7779	9834	7853	10010	13302
9781	7780	9835	7854	10010.2	13303
9782	7781	9836	7855	10010.5	13304
9783	15490	9837	7856	10011	13305
9784	7782	9838	7857	10012	13306
9785	7783	9842	7870	10012.1	13307
9786	7784	9843	7871	10012.3	13308
9787	7785	9850	7880	10012.5	13309
9790	7800	9851	7881	10012.7	13310
9790.5	7801	9852	7882	10013	13311
9791	7802	9853	7883	10013.5	13312
9792	7803	9854	7884		13313

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
10014	13219	10224	13214	10327	13247
10015	13314	10225	13215	10330	301
10016	13101	10226	13216	10331	302
10017	13315	10227	13217	10332	344
10200	13100	10229	13231		345
10200.5	13102	10230	13230	10333	13260
10201	13103	10230.1	13232	10334	13261
10203	13203	10231	13118	10335	13262
10204	13204	10232	13201	10336	13263
10205	13205	10233	13220	10337	13264
10206	13206	10234	13233	10338	13265
10207	13207	10235	13119	10339	13266
10208	13208	10236	13120	10340	13267
10208.5	13209	10300	303	11700	20000
10209	13104	10301	13280	11701	20001
10210	13105	10302	13281	11702	20002
10210.5	13106	10302.5	13282	11703	20003
10211	13107	10303	13283	11704	20004
10212	13108	10304	13284	11705	20005
10213	13109	10305	13285	11706	20006
10214	13110	10306	13286	11707	20007
10215	13202	10307	13287	11708	20008
10216	13111	10307.5	13316	11709	20009
10217	13112	10308	13288	11710	16
10217.5	13113	10309	13289	12200	20100
10217.7	13114	10320	13240	12300	20200
10218	13115	10321	13241	12300.1	305
10219	13116	10322	13242		309
10219.5	13117	10323	13243	12301	20201
10220	13210	10324	13244	12302	20202
10221	13211	10324.5	13317	12303	20203
10222	13212	10325	13245		
10223	13213	10326	13246		

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
12400	20300	14204	14202	14237	14284
12401	20301	14205.5	14203	14238	14321
12500	20400	14206	14212	14239	14285
12510	20420	14207	14213	14240	14286
12511	304	14208	14214	14241	14287
12512	305	14209	14215	14242	14288
12513	20420	14210	14320	14243	14290
12520	20440	14211	14216	14244	14291
12522	20441	14212	14217	14245	14292
12523	20442	14213	14218	14246	14293
12524	20443	14214	14219	14247	14297
12525	20444	14215	14220	14249	14295
12527	20500	14216	14240	14250	14296
12528	20501	14217	14241	14251	14294
12530	20502	14218	14242	14252	14298
14000	14100	14219	14243	14253	14310
14001	14101	14220	14244	14255	14299
14002	14102	14221	14245	14300	14400
14003	14103	14222	14246	14301	14401
14004	14104	14223	14247	14302	14402
14005	14105	14224	14248	14303	14403
14005.4	14106	14225	14249	14304	14404
14005.5	14107	14226	14250	14305	14405
14005.6	14108	14227	14251	14306	14406
14006	14109	14228	14252	14350	14000
14007	14110	14229	14253	14351	14001
14008	14111	14230	14278	14352	14002
14009	10405	14231	14279	14354	14003
14200	14210	14232	14280	14400	14221
14201	14211	14233	14281	14400.1	14222
14202	14200	14234	14282	14401	14223
14203	14201	14236	14283	14402	14224

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
14403	14225	15020	19001	15206	12356
14404	14226	15021	19002	15207	12357
14405	14227	15022	19003	15209	14112
14427	14289	15023	19210	15210	14113
14500	17000	15024	19211	15220	14270
14510	17001	15025	19005	15221	14271
14600	17100	15026	19212	15222	14272
14700	17200	15100	19100	15223	14273
14800	17300	15101	19203	15224	14274
14810	17301	15102	19101	15225	14275
14811	17302	15103	19102	15226	14276
14820	17303	15104	19204	15227	14277
14821	17304	15105	19103	15240	14420
14830	17305	15110	19200	15241	14421
14831	17306	15111	19201	15242	14422
14900	17400	15112	19202	15243	14423
14950	17500	15113	19205	15260	15260
14960	17501	15114	19206	15261	15261
14970	17502	15115	19207	15262	15262
14971	17503	15116	19208	15263	15263
14980	17504	15117	19209	15264	15264
14981	17505	15118	19213	15265	15265
14990	17506	15119	19220	15266	15266
15000	Rep.	15120	19221	15267	15267
15003	315	15121	19004	15268	15268
15004	320	15122	19222	15269	15269
15005	344	15200	12350	15270	15270
15006	355	15201	12351	15271	15271
15007	360	15202	12352	15272	15272
15008	361	15203	12353	15272.5	15273
15009	362	15204	12354	15273	15274
15010	358	15205	12355	15274	15275

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
15275	15276	17006	15056	17061	15201
15276	15277	17007	15057	17063	15202
15300	19300	17008	15058	17070	15250
15301	19301	17009	15059	17071	15251
15302	19302	17010	15060	17080	15300
15303	19303	17011	15061	17081	15301
15304	19304	17012	15062	17082	15302
15320	19320	17013	15063	17083	15303
15321	19321	17014	15064	17084	15304
15322	19322	17020	15080	17085	15305
15340	19340	17021	15081	17086	15306
15341	19341	17022	15082	17087	15307
15342	19323	17024	15083	17088	15308
15343	19360	17025	15084	17089	15309
15344	19361	17026	15085	17090	15310
15345	19362	17030	15100	17091	15311
15346	19363	17031	15101	17100	15350
15360	19380	17032	15102	17101	15351
15361	19381	17033	15103	17102	15352
15362	19382	17040	15120	17103	15353
15363	19370	17041	15121	17110	15452
15364	19383	17042	15122	17111	15400
15365	19371	17050	12107	17112	15401
15367	19384	17052	15150	17113	15402
15368	19385	17053	15151	17120	15500
15369	19386	17054	15152	17121	15501
17000	15050	17055	15153	17122	15502
17001	15051	17056	15154	17123	15504
17002	15052	17057	15155	17124	15505
17003	15053	17058	15156	17130	15550
17004	15054	17059	15157	17134	15551
17005	15055	17060	15200	17136	15552

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
17140	15600	20053	16403	20338	16720
17150	15610	20080	16500	20339	16920
17160	15620	20081	16501	20360	16460
17160.5	15621	20082	16502	20361	16461
17161	15622	20083	16600	20362	16462
17162	15623	20084	16601	20363	16463
17163	15624	20085	16602	20364	16464
17164	15625	20086	16603	20365	16540
17165	15626	20087	16703	20366	16465
17166	15627	20088	16503	20367	16466
17167	15628	20089	16000	20368	16467
17168	15629	20110	16700	20369	16640
17169	15630	20111	16701	20370	16641
17170	15631	20112	16800	20371	16642
17171	15632	20113	16801	20372	16643
17172	15633	20114	16802	20373	16740
17173	15634	20115	16900	20374	16940
17180	15640	20116	16702	20375	16741
17182	15641	20300	16101	20376	16742
17183	15642	20301	16420	20500	15650
17190	15645	20302	16404	20501	15651
20000	16001	20303	16421	20502	15652
20001	16002	20304	16300	20502.5	15653
20002	16003	20305	16803	20503	15654
20020	16200	20330	16440	20530	15670
20021	16100	20331	16441	20531	15671
20022	16201	20332	16442	20532	15672
20023	16202	20333	16443	20533	15673
20024	16203	20334	16444	22000	10000
20050	16400	20335	16520	22002	10001
20051	16401	20336	16521	22003	10002
20052	16402	20337	16620	22004	10003

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
22005	10004	22843.5	10229	23303	10408
22030	12241	22900	10240	23304	10409
22050	12322	22902	10241	23305	10410
22051	12323	22903	10242	23306	10411
22052	12324	22904	10243	23307	10412
22600	10100	22930	10260	23308	10413
22601	10101	22930.5	10261	23309	10414
22602	10102	22932	10262	23310	10415
22603	10103	22932.5	10263	23311	10416
22800	342	22933	10264	23312	10417
22801	12108	22934	10265	23314	10418
22802	12328	22935	10266	23500	10500
22804	12329	23100	10300	23501	10501
22805	12330	23101	10301	23502	10502
22806	10200	23102	10302	23502.5	10503
22807	10201	23103	10303	23503	10500
22808	10202	23104	10304	23504	10504
22830	12109	23105	10305	23506	10505
22831	12110	23106	10306	23507	10506
22832	12111	23107	10307	23508	10507
22833	12112	23108	10308	23509	1304
22834	12113	23109	10309	23509.1	4106
22835	12114	23110	10310	23509.2	4107
22836	10220	23111	10311	23509.5	1501
22837	10221	23112	10312	23510	10508
22838	10222	23300	10400	23510.5	10509
22839	10223	23301	10401	23511	12115
22840	10224	23301.5	10402	23511.1	4108
22840.5	10225	23302	10403	23511.2	4104
22841	10226	23302.1	10404	23511.3	4105
22842	10227	23302.3	10406	23511.4	4003
22843	10228	23302.5	10407	23512	10510

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
23512.12	10513	23540.5	10540	25103	6904
23512.2	10511	23541	10541	25104	6905
23512.6	10512	23542	10542	25105	6906
23513	10514	23543	10543	25106	6907
23520	10515	23544	10544	25107	6908
23521	12116	23547	10545	25108	6909
23521.5	10516	23549	10546	25300	8200
23523	10517	23550	10547	25301	8023
23523.5	10518	23551	10548	25302	8201
23523.7	10519	23552	10549	25303	8202
23524	10520	23553	10550	25304	8203
23525	10521	23554	10551	25305	8204
23526	10522	23554.5	10552	25330	8220
23526.5	10523	23555	10553	25331	8221
23527	10524	23556	10554	25332	8222
23527.5	10525	23557	10555	25333	8223
23528	12286	23557.5	1502	25334	8224
23529	10526	23558	10556	25335	8225
23529.5	10527	24000	10600	25336	8226
23530	10528	24001	10601	25337	8227
23530.5	10529	24002	10602	25338	8228
23531	10530	24003	12118	25500	8022
23531.5	10531	24004	13121	27000	11000
23532	10532	24005	10603	27001	11001
23533	10533	25000	324	27002	11002
23534	10534	25001	10720	27003	11003
23535	10535	25003	8700	27004	322
23536	10536	25050	15503	27005	11004
23537	10537	25100	6900	27006	11005
23538	10538	25100.5	6901	27007	11006
23539	10539	25101	6902	27008	11007
23540	12117	25102	6903	27020	11020

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
27021	11021	27303	11302	29203.7	18105
27022	11022	27304	11303	29204	18106
27023	11023	27310	11320	29205	18107
27024	11024	27311	11321	29206	18108
27030	11040	27312	11322	29207	18109
27031	11041	27313	11323	29300	18200
27031.5	11042	27315	11324	29301	18201
27032	11043	27316	11325	29302	18202
27033	11044	27316.1	11326	29303	18203
27035	11045	27317	11327	29304	18204
27036	11046	27320	11328	29305	18205
27037	11047	27321	11329	29413	18300
27100	11100	27330	11360	29414	18301
27101	11101	27331	11361	29415	18302
27102	11102	27332	11362	29416	18303
27103	11103	27333	11363	29420	18310
27104	11104	27334	11364	29421	18311
27200	11200	27340	11380	29430	18320
27201	11201	27341	11381	29440	18340
27210	11220	27342	11382	29450	18350
27211	11221	27343	11383	29451	18351
27212	11222	27344	11384	29460	18360
27213	11223	27345	11385	29462	18361
27214	11224	27346	11386	29470	18370
27215	11225	29100	18000	29473	18371
27216	11226	29101	18001	29480	18380
27217	11227	29102	18002	29490	18390
27230	11240	29200	18100	29500	18400
27230.5	11241	29200.5	18101	29501	18401
27231	11242	29201	18102	29505	18402
27301	11300	29202	18103	29506	18403
27302	11301	29203	18104	29610	18500

See footnotes at conclusion of this table.

DISPOSITION TABLE—1961 CODE

OLD	NEW	OLD	NEW	OLD	NEW
29611	18501	29656	18576	30011	Rep.
29612	18502	29657	18577	30020	Rep.
29620	18520	29658	18578	30020.5	Rep.
29621	18521	29710	342	30021	Rep.
29622	18522	29711	343	30022	Rep.
29623	18523	29720	18600	30030	Rep.
29624	18524	29721	18601	30031	Rep.
29630	18540	29722	18602	30032	Rep.
29630.5	18541	29723	18603	30040	Rep.
29631	18542	29730	18610	30041	Rep.
29632	18543	29731	18611	30042	Rep.
29634	18544	29732	18612	30043	Rep.
29635	18545	29733	18613	30044	Rep.
29636	18546	29734	18614	35000	21500
29640	18560	29740	18620	35001	21501
29641	18561	29741	18621	35002	21502
29643	18562	29742	18622	35003	21503
29644	18563	29750	18630	35004	21504
29645	18564	29751	18631	35005	21505
29645.1	18565	29760	18640	35006	21506
29646	18566	29770	18650	35100	21600
29647	18567	29780	18660	35101	21601
29648	18568	29781	18661	35102	21602
29649	18569	29790	18670	35103	21603
29650	18570	29791	18671	35104	21604
29651	18571	29795	18680	35105	21605
29652	18572	29800	18700	35106	21606
29653	18573	30000	21001	35150	21620
29654	18574	30001	21002		
29655	18575	30010	Rep.		

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[1] Repeal operative January 1, 1998.
[2] Operative January 1, 1998.
[3] Repeal operative January 1, 1996.
[4] Operative January 1, 1996.
[5] Repeal operative January 1, 1995.
[6] Repeal operative January 1, 1999.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
1	1		12512	333	6489
2	2	306	5010	334	37
3	3	307	14	335	12
4	4	308	5151.5	336	3513
5	5	309	12300.1	337	36
6	6	310	10	338	35
7	7	311	13	339	39
8	9	312	3780	340	22 [1]
9	47	313	34	340	22 [2]
10	55	314	33	341	21
11	58	315	15003	342	29710
12	49	316	23 [1]	343	29711
13	52	316	23 [2]	344	10332
14	50	317	5151		15005
15	60	318	19	345	10332
16	11710	319	40	346	214
100	41	320	15	347	16
101	41.5		15004	348	26
102	42	321	17	349	200
103	43	322	1100	350	5320
104	44		27004	351	32
105	45	323	1301	352	31
106	53	324	20	353	8
200	70		25000	354	11
201	75	325	30	355	15006
300	1000	326	29	356	27
301	10330	327	28	357	24
302	10331	328	25	358	15010
303	10300	329	38	359	18
304	12511	330	17	360	15007
305	604.5	331	1126		
	12300.1	332	27004		

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
361	15008	2028	208	2120	316
362	15009	2029	209	2121	318
1000	2500 [1]	2030	210	2122	319
1000	2500 [2]	2031	211	2123	320
1001	2501 [1]	2032	212	2130	827
1001	2501 [2]	2033	215	2135	400
1002	2502	2034	216	2136	401
1003	2503	2035	217	2137	402
1100	2520	2050	225	2138	403
1200	2550	2051	226	2139	404
1201	2551 [1]	2052	227	2140	405
1201	2551 [2]	2053	228	2141	406
1202	2552 [1]	2100	300	2142	407
1202	2522 [2]	2101	300.5	2143	408
1300	2600	2102	301	2150	500
1301	2601	2103	302	2151	501
1302	2602	2104	303	2152	502
1303	2603	2105	304	2153	503
1304	23509	2106	304.5	2154	503.5
1400	2650	2107	305	2155	504
1500	2604	2108	306	2156	505
1501	23509.5	2109	307	2157	506
1502	23557.5	2110	308	2158	507
2000	100	2111	309	2159	507.5
2020	201	2112	309.5	2160	508
2021	202	2113	310	2161	509
2022	203	2114	311	2162	509.1
2023	204	2115	311.5	2163	509.3
2024	205	2116	311.6	2164	510
2025	206	2117	312	2165	511
2026	206.5	2118	313	2166	511.5
2027	207	2119	315		

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
2167	512	2222	800.2	3023	1019
2180	600	2223	800.3	3100	1200
2181	601	2224	801	3101	1201
2182	602	2225	802	3102	1202
2183	603	2226	803	3103	1202.1
2184	604	2227	804	3104	1202.3
2185	605	2228	805	3105	1203
2186	606	2240	825	3106	1204
2187	607	2241	826	3107	1205
2188	608	3000	1001	3108	1206
2189	609	3001	1002	3109	1206.3
2190	611	3002	1002.5	3110	1206.5
2191	611.1	3003	1003	3111	1207
2192	612	3004	1004	3112	1208
2193	613	3005	1005	3200	1450
2194	615	3006	1006	3201	1451
2200	700	3007	1006.1	3202	1452
2201	701	3008	1006.3	3203	1453
2202	702	3009	1007	3204	1454
2203	703	3010	1008	3205	1455
2204	703.5	3011	1009	3206	1456
2205	704	3012	1009.5	3300	1300
2206	704.5	3013	1010	3301	1302
2207	705	3014	1011	3302	1303
2208	707.5	3015	1012	3303	1304
2209	707.6	3016	1012.5	3304	1304.5
2210	707.7	3017	1013	3305	1305
2211	707.8	3018	1014	3306	1305.5
2212	708	3019	1015	3307	1306
2213	709	3020	1016	3308	1307
2220	800	3021	1017	3309	1308
2221	800.1	3022	1018	3310	1309

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
3311	1310	5004	9954	6084	6328.3 [1]
3400	1101	5005	9955	6084	6328.3 [2]
3401	1101.5	5006	9956	6085	6328.5
3402	1102	5100	6430	6086	6329 [1]
3403	1103	5101	6430.5	6086	6329 [2]
3404	1104	5102	6431	6087	6329.5
3405	1105	5200	6432	6100	6330
3406	1106	6000	6300	6101	6331
3407	1107	6001	6301	6102	6332
3408	1109	6002	6303	6103	6333
3500	1127	6003	6303.1	6104	6334
3501	1128	6004	6303.2	6105	6335
3502	1129	6005	6303.3	6106	6336
3503	1130	6020	6305 [1]	6107	6337
4000	1340	6020	6305 [2]	6108	6338
4001	1340.5 [5]	6021	6305.1	6120	6340
4002	1341	6022	6305.2	6121	6341
4003	23511.4	6023	6306	6122	6342 [1]
4100	1350	6024	6307	6122	6342 [2]
4101	1351	6040	6310	6123	6343
4102	1352	6041	6311 [1]	6140	6345
4103	1353	6041	6311 [2]	6141	6346
4104	23511.2	6042	6312	6142	6347
4105	23511.3	6043	6313	6143	6348
4106	23509.1	6060	6315	6144	6349
4107	23509.2	6061	6316 [1]	6145	6350
4108	23511.1	6061	6316 [2]	6146	6351
5000	9950	6080	6325	6160	6355
5001	9951	6081	6326	6180	6360 [1]
5002	9952	6082	6327	6180	6360 [2]
5003	9953	6083	6328	6181	6361.5

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
6200	6365	6383	6033	6542	6122
6201	6365.5	6400	6040	6543	6123 [1]
6202	6366	6401	6041	6543	6123 [2]
6203	6367	6402	6042	6560	6130
6204	6368	6403	6043	6561	6131
6220	6370	6404	6044	6562	6132
6221	6371	6405	6045	6563	6133
6222	6372	6406	6046	6564	6134
6240	6375	6420	6055	6565	6135
6241	6376	6421	6056	6566	6136
6300	6000	6422	6057	6567	6138
6301	6002	6440	6060	6568	6139 [1]
6320	6005 [1]	6441	6061	6568	6139 [2]
6320	6005 [2]	6442	6062	6580	6140
6321	6006	6443	6063	6581	6141
6322	6007	6460	6070	6582	6142
6323	6008	6461	6071	6583	6143
6340	6010	6480	6080	6584	6144
6341	6011	6500	6100	6585	6145
6342	6012	6501	6102	6586	6146
6343	6013 [1]	6502	6103	6587	6147
6343	6013 [2]	6520	6110 [1]	6588	6148
6360	6021	6520	6110 [2]	6589	6149
6361	6024	6521	6111	6590	6150
6362	6025	6522	6112	6591	6151
6363	6026	6523	6113 [1]	6592	6152
6364	6027	6523	6113 [2]	6593	6153
6365	6028	6524	6114	6594	6154
6380	6030	6540	6120 [1]	6595	6155
6381	6031	6540	6120 [2]	6596	6156
6382	6032	6541	6121	6597	6157

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
6598	6158	6743	6223 [2]	6798	6258
6599	6159	6744	6224	6820	6270
6620	6170	6745	6225	6821	6271
6621	6171	6760	6230	6822	6272
6640	6190	6761	6231	6840	6285
6641	6191	6762	6232	6841	6286
6642	6193	6763	6233	6842	6287
6643	6194	6764	6234	6843	6288
6644	6195	6765	6235	6844	6289
6645	6196	6766	6236	6845	6290
6646	6197	6767	6237	6846	6291
6647	6198	6768	6238	6847	6292
6700	6200	6769	6239	6848	6293
6701	6202	6780	6240	6849	6294
6702	6203	6781	6241	6900	25100
6720	6210	6782	6242	6901	25100.5
6721	6210.5 [1]	6783	6243	6902	25101
6721	6210.5 [2]	6784	6244	6903	25102
6722	6211 [1]	6785	6245	6904	25103
6722	6211 [2]	6786	6246	6905	25104
6723	6212	6787	6247	6906	25105
6724	6213	6788	6248	6907	25106
6725	6214 [1]	6789	6249	6908	25107
6725	6214 [2]	6790	6250	6909	25108
6726	6215	6791	6251	6950	6360.5
6740	6220 [1]	6792	6252	6951	6260
6740	6220 [2]	6793	6253	6952	6261 [1]
6741	6221	6794	6254	6952	6261 [2]
6742	6222 [1]	6795	6255	6953	6160
6742	6222 [2]	6796	6256	6954	6050
6743	6223 [1]	6797	6257	7000	8000

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
7050	8500	7193	8773	7243	8943
7100	8510	7194	8774	7244	8944
7150	8660	7195	8775	7250	9000
7151	8660.1	7196	8776	7300	9010
7152	8660.2	7197	8777	7350	9160
7153	8660.3	7198	8778	7351	9160.5
7154	8661	7200	8820	7352	9160.7
7155	8662	7201	8820.5	7353	9160.8
7156	8663	7202	8821	7354	9160.9
7157	8664	7203	8822	7355	9161
7158	8665	7204	8823	7356	9161.5
7159	8666	7205	8823.5	7357	9162
7160	8667	7206	8824	7358	9163
7161	8668	7207	8825	7359	9164
7162	8669	7208	8826	7360	9165
7163	8670	7209	8827	7361	9166
7164	8671	7210	8828	7362	9167
7165	8672	7211	8829	7363	9168
7166	8673	7212	8830	7364	9169
7167	8674	7213	8831	7365	9170
7168	8675	7214	8832	7366	9171
7169	8676	7215	8833	7375	9240
7170	8677	7216	8833	7376	9240.5
7171	8678	7225	8870	7377	9241
7180	8711	7226	8871	7378	9242
7185	8740	7227	8872	7379	9243
7186	8740.5	7228	8873	7380	9270
7187	8741	7229	8875	7381	9271
7188	8744	7235	8923	7382	9272
7190	8770	7240	8940	7383	9273
7191	8771	7241	8941	7384	9274
7192	8772	7242	8942	7385	9276

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
7386	9277	7461	9501	7602	9640.2
7387	9278	7462	9502	7603	9641
7388	9279	7463	9503	7604	9642
7389	9280	7464	9504	7605	9643
7400	9320	7465	9505	7606	9644
7401	9321	7466	9506	7607	9645
7402	9322	7467	9507	7608	9646
7403	9323	7468	9508	7609	9647
7404	9324	7469	9509	7610	9648
7405	9325	7470	9510	7611	9649
7406	9326	7500	9600	7612	9650
7407	9327	7550	9610	7613	9651
7408	9328	7551	9611	7614	9652
7409	9329	7552	9611.5	7620	9660
7410	9330	7553	9611.6	7621	9661
7411	9331	7554	9611.7	7625	9670
7412	9332	7555	9612	7626	9670.5
7413	9333	7556	9613	7627	9671
7414	9334	7557	9614	7628	9672
7420	9370	7558	9615	7635	9680
7421	9371	7559	9616	7636	9681
7422	9372	7560	9617	7637	9682
7423	9373	7561	9618	7638	9683
7424	9375	7570	9620	7639	9684
7430	9422	7575	9630	7640	9685
7431	9423	7576	9631	7641	9686
7440	9440	7577	9632	7642	9687
7441	9441	7578	9633	7643	9688
7442	9442	7579	9634	7644	9689
7443	9443	7580	9635	7645	9690
7444	9444	7600	9640	7650	9700
7460	9500	7601	9640.1	7651	9701

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
7652	9702	7770	9770	7839	9819
7653	9703	7771	9771	7840	9820
7654	9704	7772	9772	7841	9821
7655	9705	7773	9773	7842	9822
7656	9706	7774	9774	7843	9823
7657	9707	7775	9775	7850	9831
7658	9708	7776	9776	7851	9832
7659	9709	7777	9777	7852	9833
7660	9710	7778	9779	7853	9834
7661	9711	7779	9780	7854	9835
7670	9720	7780	9781	7855	9836
7671	9721	7781	9782	7856	9837
7672	9722	7782	9784	7857	9838
7673	9723	7783	9785	7870	9842
7674	9725	7784	9786	7871	9843
7680	9730	7785	9787	7880	9850
7681	9731	7800	9790	7881	9851
7682	9732	7801	9790.5	7882	9852
7683	9733	7802	9791	7883	9853
7690	9740	7803	9792	7884	9854
7691	9741	7804	9793	8000	6400
7692	9742	7805	9794	8001	6401
7693	9743	7820	9801	8002	6401.5
7694	9744	7830	9810	8003	6402
7695	9745	7831	9811	8020	6490
7700	9750	7832	9812	8021	6509
7750	9760	7833	9813	8022	25500
7751	9761	7834	9814	8023	25301
7752	9762	7835	9815	8024	6490.1
7753	9763	7836	9816	8025	6490.2
7754	9764	7837	9816.5	8026	6490.3
7755	9765	7838	9817	8027	6490.4

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
8028	6490.5	8124	6583	8350	6810
8040	6491	8125	6584	8400	6831
8041	6494	8140	6611	8401	6831.1
8042	6498	8141	6612	8402	6832
8060	6493	8142	6613	8403	6833
8061	6494.1	8143	6614	8404	6834
8062	6495	8144	6614.5	8405	6834.1
8063	6496	8145	6615	8406	6835
8064	6496.5	8146	6616	8407	6836
8065	6497	8147	6617	8408	6837
8066	6499	8148	6618	8409	6838
8067	6500	8149	6619	8450	6860
8068	6501	8150	6620	8451	6861
8069	6502	8200	25300	8452	6862
8070	6505	8201	25302	8453	6863
8080	6504	8202	25303	8454	6864
8081	6506	8203	25304	8500	6890
8082	6507	8204	25305	8501	6891
8083	6508	8220	25330	8502	6892
8084	6555.5	8221	25331	8503	6893
8100	6550	8222	25332	8504	6894
8101	6551	8223	25333	8550	6920
8102	6503	8224	25334	8600	7300
8103	6552	8225	25335	8601	7301
8104	6553	8226	25336	8602	7302
8105	6554	8227	25337	8603	7303
8106	6555	8228	25338	8604	7304
8107	6556	8300	6800	8605	6661
8120	6580	8301	6801	8650	7310
8121	6580.5	8302	6802	8651	7311
8122	6581	8303	6803	8652	7312
8123	6582	8304	6804	8653	7313

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
8700	25003	9030	3520	9087	3572
8800	6650	9031	3521	9088	3572.5
8801	6651	9032	3522	9089	3573
8802	6651.5	9033	3523	9090	3574
8803	6653	9034	3523.1	9091	3575
8804	6653.3	9035	3524	9092	3576
8805	6654	9040	3525	9093	3577
8806	6655	9041	3526	9094	3578
8807	6656	9042	3527	9095	3578.5
8808	6657	9043	3528	9096	3579
8809	6658	9044	3529	9100	3700
8810	6659	9050	3530	9101	3701
8811	6660	9051	3531	9102	3701.5
9000	3500	9052	3532	9103	3702
9001	3501	9053	3533	9104	3702.1
9002	3502	9060	3559	9105	3702.5
9003	3502.05	9061	3560	9106	3702.7
9004	3503	9062	3561	9107	3703
9005	3504	9063	3562	9108	3704
9006	3505	9064	3563	9109	3704.5
9007	3506	9065	3564	9110	3705
9008	3507	9066	3564.1	9111	3705.5
9009	3508	9067	3565	9112	3705.6
9010	3509	9068	3566	9113	3706
9011	3510	9069	3567	9114	3707
9012	3511	9080	3567.5	9115	3708
9013	3514	9081	3568	9116	3709
9014	3515	9082	3569	9117	3710
9015	3515.1	9083	3569.5	9118	3711
9020	3516	9084	3570	9119	3713
9021	3517	9085	3570.5 [6]	9120	3714
9022	3519	9086	3571		

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
9121	3715	9207	4005	9247	4061
9122	3716	9208	4006	9255	4080
9123	3717	9209	4007	9256	4081
9124	3718	9210	4008	9257	4082
9125	3719	9211	4009	9258	4083
9126	3720	9212	4009.5	9259	4084
9140	3750	9213	4009.6	9260	4085
9141	3751	9214	4010	9261	4086
9142	3751.7	9215	4011	9262	4087
9143	3752	9216	4012	9263	4088
9144	3753	9217	4013	9264	4089
9145	3754	9218	4014	9265	4090
9146	3755	9219	4015	9266	4091
9147	3755.5	9220	4015.5	9267	4093
9160	3781	9221	4016	9268	4094
9161	3782	9222	4017	9269	4095
9162	3783	9223	4018	9280	5011
9163	3784	9224	4019	9281	5012
9164	3785	9225	4020	9282	5013
9165	3785.1	9226	4021	9283	5014
9166	3786	9235	4050	9284	5014.1
9167	3787	9236	4050.1	9285	5014.5
9168	3788	9237	4051	9286	5015
9180	3790	9238	4052	9287	5016
9190	3795	9239	4053	9290	5020
9200	4000	9240	4054	9295	5025
9201	4001	9241	4055	9300	5150
9202	4002	9242	4056	9301	5152
9203	4002.5	9243	4057	9302	5152.1
9204	4002.7	9244	4058	9303	5152.2
9205	4003	9245	4059	9304	5152.3
9206	4004	9246	4060	9305	5152.4

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
9306	5152.5	9503	5324	10225	22840.5
9307	5152.6	9504	5325	10226	22841
9308	5153	9505	5326	10227	22842
9309	5153.5	9506	5327	10228	22843
9310	5154	9507	5328	10229	22843.5
9311	5154.3	9508	5329	10240	22900
9312	5156	9509	5330	10241	22902
9313	5156.5	9600	5350	10242	22903
9314	5156.6	9601	5351	10243	22904
9315	5157	9602	5352	10260	22930
9316	5157.2	9603	5353	10261	22930.5
9317	5157.5	9604	5354	10262	22932
9318	5157.6	9605	5355	10263	22932.5
9319	5158	9606	5357	10264	22933
9320	5159	9607	5358	10265	22934
9321	5160	10000	22000	10266	22935
9322	5161	10001	22002	10300	23100
9323	5162	10002	22003	10301	23101
9340	5200	10003	22004	10302	23102
9341	5200.1	10004	22005	10303	23103
9342	5201	10100	22600	10304	23104
9360	5210	10101	22601	10305	23105
9380	5215	10102	22602	10306	23106
9400	5300	10103	22603	10307	23107
9401	5301	10200	22806	10308	23108
9402	5302	10201	22807	10309	23109
9403	5303	10202	22808	10310	23110
9404	5304	10220	22836	10311	23111
9405	5305	10221	22837	10312	23112
9500	5321	10222	22838	10400	23300
9501	5322	10223	22839	10401	23301
9502	5323	10224	22840	10402	23301.5

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
10403	23302	10516	23521.5	10548	23551
10404	23302.1	10517	23523	10549	23552
10405	14009	10518	23523.5	10550	23553
10406	23302.3	10519	23523.7	10551	23554
10407	23302.5	10520	23524	10552	23554.5
10408	23303	10521	23525	10553	23555
10409	23304	10522	23526	10554	23556
10410	23305	10523	23526.5	10555	23557
10411	23306	10524	23527	10556	23558
10412	23307	10525	23527.5	10600	24000
10413	23308	10526	23529	10601	24001
10414	23309	10527	23529.5	10602	24002
10415	23310	10528	23530	10603	24005
10416	23311	10529	23530.5	10700	2651
10417	23312	10530	23531	10701	2652
10418	23314	10531	23531.5	10702	7200
10500	23503	10532	23532	10703	7200.5
10501	23501	10533	23533	10704	7201
10502	23502	10534	23534	10705	7202
10503	23502.5	10535	23535	10706	7203
10504	23504	10536	23536	10707	7204
10505	23506	10537	23537	10720	25001
10506	23507	10538	23538	11000	27000
10507	23508	10539	23539	11001	27001
10508	23510	10540	23540.5	11002	27002
10509	23510.5	10541	23541	11003	27003
10510	23512	10542	23542	11004	27005
10511	23512.2	10543	23543	11005	27006
10512	23512.6	10544	23544	11006	27007
10513	23512.12	10545	23547	11007	27008
10514	23513	10546	23549	11020	27020
10515	23520	10547	23550	11021	27021

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
11022	27022	11303	27304	12107	17050
11023	27023	11320	27310	12108	22801
11024	27024	11321	27311	12109	22830
11040	27030	11322	27312	12110	22831
11041	27031	11323	27313	12111	22832
11042	27031.5	11324	27315	12112	22833
11043	27032	11325	27316	12113	22834
11044	27033	11326	27316.1	12114	22835
11045	27035	11327	27317	12115	23511
11046	27036	11328	27320	12116	23521
11047	27037	11329	27321	12117	23540
11100	27100	11360	27330	12118	24003
11101	27101	11361	27331	12200	1500
11102	27102	11362	27332	12220	1501
11103	27103	11363	27333	12221	1511
11104	27104	11364	27334	12222	1513
11200	27200	11380	27340	12223	1505
11201	27201	11381	27341	12224	1508
11220	27210	11382	27342	12225	1510
11221	27211	11383	27343	12226	1506
11222	27212	11384	27344	12227	1509
11223	27213	11385	27345	12228	1507
11224	27214	11386	27346	12229	1644
11225	27215	12000	2553	12240	1508.5
11226	27216	12001	2653	12241	22030
11227	27217	12100	6461	12260	1503
11240	27230	12101	6462	12261	1514
11241	27230.5	12102	6463	12262	1513.1
11242	27231	12103	1642	12280	1638.5
11300	27301	12104	1642.9	12281	1650
11301	27302	12105	1643	12282	1504.5
11302	27303	12106	1643.3	12283	1504

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
12284	1504.6	12329	22804	13113	10217.5
12285	1638.7	12330	22805	13114	10217.7
12286	23528	12350	15200	13115	10218
12300	1637.5	12351	15201	13116	10219
12301	1630	12352	15202	13117	10219.5
12302	1633	12353	15203	13118	10231
12303	1635	12354	15204	13119	10235
12304	1631	12355	15205	13120	10236
12305	1632	12356	15206	13121	24004
12306	1639	12357	15207	13200	10006
12307	1641	13000	10005	13201	10232
12308	1634	13001	10000 [3]	13202	10215
12309	1640	13001	10000 [4]	13203	10203
12310	1653	13002	10001	13204	10204
12311	1654	13003	10001.5	13205	10205
12312	1655	13004	10002	13206	10206
12313	1649	13005	10002.5	13207	10207
12314	1651	13006	10003	13208	10208
12315	1652	13007	10004	13209	10208.5
12316	1646	13100	10200	13210	10220
12317	1647	13101	10016	13211	10221
12318	1642.3	13102	10200.5	13212	10222
12319	1645	13103	10201	13213	10223
12320	1636	13104	10209	13214	10224
12321	1637	13105	10210	13215	10225
12322	22050	13106	10210.5	13216	10226
12323	22051	13107	10211	13217	10227
12324	22052	13108	10212	13219	10014
12325	1515	13109	10213	13220	10233
12326	1638	13110	10214	13230	10230
12327	1648	13111	10216	13231	10229
12328	22802	13112	10217		

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
13232	10230.1	13304	10010.2	14200	14202
13233	10234	13305	10010.5	14201	14203
13240	10320	13306	10011	14202	14204
13241	10321	13307	10012	14203	14205.5
13242	10322	13308	10012.1	14210	14200
13243	10323	13309	10012.3	14211	14201
13244	10324	13310	10012.5	14212	14206
13245	10325	13311	10012.7	14213	14207
13246	10326	13312	10013	14214	14208
13247	10327	13313	10013.5	14215	14209
13260	10333	13314	10015	14216	14211
13261	10334	13315	10017	14217	14212
13262	10335	13316	10307.5	14218	14213
13263	10336	13317	10324.5	14219	14214
13264	10337	14000	14350	14220	14215
13265	10338	14001	14351	14221	14400
13266	10339	14002	14352	14222	14400.1
13267	10340	14003	14354	14223	14401
13280	10301	14100	14000	14224	14402
13281	10302	14101	14001	14225	14403
13282	10302.5	14102	14002	14226	14404
13283	10303	14103	14003	14227	14405
13284	10304	14104	14004	14240	14216
13285	10305	14105	14005	14241	14217
13286	10306	14106	14005.4	14242	14218
13287	10307	14107	14005.5	14243	14219
13288	10308	14108	14005.6	14244	14220
13289	10309	14109	14006	14245	14221
13300	10007	14110	14007	14246	14222
13301	10008	14111	14008	14247	14223
13302	10009	14112	15209	14248	14224
13303	10010	14113	15210	14249	14225

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
14250	14226	14298	14252	15054	17004
14251	14227	14299	14255	15055	17005
14252	14228	14310	14253	15056	17006
14253	14229	14320	14210	15057	17007
14270	15220	14321	14238	15058	17008
14271	15221	14400	14300	15059	17009
14272	15222	14401	14301	15060	17010
14273	15223	14402	14302	15061	17011
14274	15224	14403	14303	15062	17012
14275	15225	14404	14304	15063	17013
14276	15226	14405	14305	15064	17014
14277	15227	14406	14306	15080	17020
14278	14230	14420	15240	15081	17021
14279	14231	14421	15241	15082	17022
14280	14232	14422	15242	15083	17024
14281	14233	14423	15243	15084	17025
14282	14234	15000	1400	15085	17026
14283	14236	15001	1401	15100	17030
14284	14237	15002	1402	15101	17031
14285	14239	15003	1403	15102	17032
14286	14240	15004	1404	15103	17033
14287	14241	15005	1405	15120	17040
14288	14242	15006	1407	15121	17041
14289	14427	15007	1408	15122	17042
14290	14243	15008	1409	15150	17052
14291	14244	15009	1409.5	15151	17053
14292	14245	15010	1410	15152	17054
14293	14246	15011	1411	15153	17055
14294	14247	15050	17000	15154	17056
14295	14249	15051	17001	15155	17057
14296	14250	15052	17002	15156	17058
14297	14251	15053	17003	15157	17059

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
15200	17060	15309	17089	15624	17163
15201	17061	15310	17090	15625	17164
15202	17063	15311	17091	15626	17165
15250	17070	15350	17100	15627	17166
15251	17071	15351	17101	15628	17167
15260	15260	15352	17102	15629	17168
15261	15261	15353	17103	15630	17169
15262	15262	15400	17111	15631	17170
15263	15263	15401	17112	15632	17171
15264	15264	15402	17113	15633	17172
15265	15265	15450	54	15634	17173
15266	15266	15451	6610	15640	17180
15267	15267	15452	17110	15641	17182
15268	15268	15460	8874	15642	17183
15269	15269	15470	9374	15645	17190
15270	15270	15480	9724	15650	20500
15271	15271	15490	9783	15651	20501
15272	15272	15500	17120	15652	20502
15273	15272.5	15501	17121	15653	20502.5
15274	15273	15502	17122	15654	20503
15275	15274	15503	25050	15670	20530
15276	15275	15504	17123	15671	20531
15277	15276	15505	17124	15672	20532
15300	17080	15550	17130	15673	20533
15301	17081	15551	17134	16000	20089
15302	17082	15552	17136	16001	20000
15303	17083	15600	17140	16002	20001
15304	17084	15610	17150	16003	20002
15305	17085	15620	17160	16100	20021
15306	17086	15621	17160.5	16101	20300
15307	17087	15622	17161	16200	20020
15308	17088	15623	17162	16201	20022

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
16202	20023	16602	20085	17306	14831
16203	20024	16603	20086	17400	14900
16300	20304	16620	20337	17500	14950
16400	20050	16640	20369	17501	14960
16401	20051	16641	20370	17502	14970
16402	20052	16642	20371	17503	14971
16403	20053	16643	20372	17504	14980
16404	20302	16700	20110	17505	14981
16420	20301	16701	20111	17506	14990
16421	20303	16702	20116	18000	29100
16440	20330	16703	20087	18001	29101
16441	20331	16720	20338	18002	29102
16442	20332	16740	20373	18100	29200
16443	20333	16741	20375	18101	29200.5
16444	20334	16742	20376	18102	29201
16460	20360	16800	20112	18103	29202
16461	20361	16801	20113	18104	29203
16462	20362	16802	20114	18105	29203.7
16463	20363	16803	20305	18106	29204
16464	20364	16900	20115	18107	29205
16465	20366	16920	20339	18108	29206
16466	20367	16940	20374	18109	29207
16467	20368	17000	14500	18200	29300
16500	20080	17001	14510	18201	29301
16501	20081	17100	14600	18202	29302
16502	20082	17200	14700	18203	29303
16503	20088	17300	14800	18204	29304
16520	20335	17301	14810	18205	29305
16521	20336	17302	14811	18300	29413
16540	20365	17303	14820	18301	29414
16600	20083	17304	14821	18302	29415
16601	20084	17305	14830	18303	29416

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
18310	29420	18561	29641	18640	29760
18311	29421	18562	29643	18650	29770
18320	29430	18563	29644	18660	29780
18340	29440	18564	29645	18661	29781
18350	29450	18565	29645.1	18670	29790
18351	29451	18566	29646	18671	29791
18360	29460	18567	29647	18680	29795
18361	29462	18568	29648	18700	29800
18370	29470	18569	29649	19001	15020
18371	29473	18570	29650	19002	15021
18380	29480	18571	29651	19003	15022
18390	29490	18572	29652	19004	15121
18400	29500	18573	29653	19005	15025
18401	29501	18574	29654	19100	15100
18402	29505	18575	29655	19101	15102
18403	29506	18576	29656	19102	15103
18500	29610	18577	29657	19103	15105
18501	29611	18578	29658	19200	15110
18502	29612	18600	29720	19201	15111
18520	29620	18601	29721	19202	15112
18521	29621	18602	29722	19203	15101
18522	29622	18603	29723	19204	15104
18523	29623	18610	29730	19205	15113
18524	29624	18611	29731	19206	15114
18540	29630	18612	29732	19207	15115
18541	29630.5	18613	29733	19208	15116
18542	29631	18614	29734	19209	15117
18543	29632	18620	29740	19210	15023
18544	29634	18621	29741	19211	15024
18545	29635	18622	29742	19212	15026
18546	29636	18630	29750	19213	15118
18560	29640	18631	29751	19220	15119

See footnotes at conclusion of this table.

DERIVATION TABLE—1994 AMENDMENTS

NEW	OLD	NEW	OLD	NEW	OLD
19221	15120	20003	11703	rep.	30011
19222	15122	20004	11704	rep.	30020
19300	15300	20005	11705	rep.	30020.5
19301	15301	20006	11706	rep.	30021
19302	15302	20007	11707	rep.	30022
19303	15303	20008	11708	rep.	30030
19304	15304	20009	11709	rep.	30031
19320	15320	20100	12200	rep.	30032
19321	15321	20200	12300	rep.	30040
19322	15322	20201	12301	rep.	30041
19323	15342	20202	12302	rep.	30042
19340	15340	20203	12303	rep.	30043
19341	15341	20300	12400	rep.	30044
19360	15343	20301	12401	21500	35000
19361	15344	20400	12500	21501	35001
19362	15345	20420	12510	21502	35002
19363	15346		12513	21503	35003
19370	15363	20440	12520	21504	35004
19371	15365	20441	12522	21505	35005
19380	15360	20442	12523	21506	35006
19381	15361	20443	12524	21600	35100
19382	15362	20444	12525	21601	35101
19383	15364	20500	12527	21602	35102
19384	15367	20501	12528	21603	35103
19385	15368	20502	12530	21604	35104
19386	15369	21000	51	21605	35105
20000	11700	21001	30000	21606	35106
20001	11701	21002	30001	21620	35150
20002	11702	rep.	30010		

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[1] Repeal operative January 1, 1998.
[2] Operative January 1, 1998.
[3] Repeal operative January 1, 1996.
[4] Operative January 1, 1996.
[5] Repeal operative January 1, 1995.
[6] Repeal operative January 1, 1999.

SEC. 74. 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. 75. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the clarifying changes proposed by this act, which are necessitated following the reorganization of the Elections Code by Chapter 920 of the Statutes of 1994, take effect as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1144

An act to add Section 14670.10 to the Government Code, relating to state property.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 14670.10 is added to the Government Code, to read:

14670.10. (a) Notwithstanding any other provision of law, if the Director of General Services leases property located at the Sonoma Developmental Center that was formerly an orchard and that has been determined to be surplus state property pursuant to Section 7 of Chapter 193 of the Statutes of 1996, the director shall lease the property only for an agricultural or open-space purpose consistent with, but not requiring the specific local government approvals related to, all of the following:

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

(2) The city and county zoning ordinances, regulations, and policies adopted for the area within which the property is located.

(3) The city and county building regulations and policies adopted for the area within which the property is located.

(b) Prior to accepting bids for the lease of the property, the Department of General Services shall comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) Leases of properties shall not disrupt existing trails and pathways located on the leased properties or access to trails and pathways on adjacent properties.

(d) Lessees of properties shall, as a condition of the lease, agree to restrict the use of hazardous substances, including, but not limited to, pesticides, herbicides, rodenticides, and insecticides, pursuant to the department's hazardous substance policy governing state agricultural leases.

(e) In recognition of the long history of persons with developmental disabilities working in agricultural production on the grounds of the Sonoma Developmental Center, lessees of properties shall, as a condition of the lease, directly employ persons with developmental disabilities in numbers equal to at least 15 percent of their total work force at the leased site. Lessees may also meet this requirement through employment at offsite facilities in California directly related to the leasehold. This requirement shall be structured in a manner that recognizes that there may be periods of time when the lessee may fall below this requirement for justified reasons.

(f) Notwithstanding any other provision of law, the Director of General Services may sell or exchange the property only if the transaction would result in a transfer of the property to an entity that would hold the property in perpetuity as open space or that would result in the property becoming part of the Jack London State Park.

(g) Notwithstanding any other provision of law, the net proceeds received by the state from the lease of the property shall be deposited as follows:

(1) Fifty percent to the General Fund for appropriation as provided in Section 15863.

(2) Fifty percent to a special account within the General Fund to be known as the Community Services Development Account. All funds within this account shall be available for appropriation by the Legislature to the State Department of Developmental Services. Any interest accruing to funds deposited in the account also shall accrue to the account. It is the intent of the Legislature that the appropriations from this account shall be used for the purposes of nonrecurring expenditures within the State Department of Developmental Services such as capital expenditures for developmental centers and startup of new community-based services. The department shall report annually to the Legislature on

the status of this account and how funds have been expended in the previous year.

"Net proceeds" for the purposes of this subdivision means gross proceeds less all costs necessary for the completion of the transaction, including costs incurred by the Department of General Services.

(h) The Department of General Services shall enter into negotiations with the County of Sonoma regarding the conveyance of a conservation easement for property on the grounds of the Sonoma Developmental Center situated above the 1,100-foot elevation line. If a conveyance of an easement is agreed upon, the easement on the subject property may be conveyed to a third-party governmental entity upon the agreement of both the department and the county.

CHAPTER 1145

An act to amend Sections 65, 84, 987.25, and 987.88 of, and to add Section 69.5 to, the Military and Veterans Code, relating to veterans.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 65 of the Military and Veterans Code is amended to read:

65. The California Veterans Board shall consist of seven members as follows:

(a) Six members who shall be appointed by the Governor subject to the confirmation of the Senate.

(b) The Secretary of Veterans Affairs shall function as a board member in all respects, except that he or she shall vote only in cases where the vote is necessary to break a tie. The Secretary shall serve at the pleasure of the Governor, and notwithstanding Section 67, his or her term as a board member shall coincide with his or her term of office as Secretary of Veterans Affairs. The Secretary of Veterans Affairs shall commence his or her term at the first available vacancy after January 1, 1996.

SEC. 2. Section 69.5 is added to the Military and Veterans Code, to read:

69.5. The board shall report to the Legislature by August 1 of each year regarding the activities, accomplishments, and expenditures of the board during the preceding calendar year.

SEC. 3. Section 84 of the Military and Veterans Code is amended to read:

84. (a) The secretary may whenever he or she deems it advisable and shall when required so to do by the board present reports and

recommendations to the board concerning any matter relating to veterans' welfare whether or not provided by existing law.

(b) Notwithstanding any other provision of law, the secretary shall not effectuate any policy change that would modify any veterans' program without first fully briefing the board regarding the effects upon veterans of the proposed policy change.

(c) For the purposes of this section and Section 700, "program" means the Veterans Home of California, the veterans' farm and home purchase program, including any associated insurance programs, and any veterans' education assistance program.

(d) "Policy change" for the purposes of this section means any proposed changes to the programs set forth in subdivision (c) that would directly or indirectly affect the eligibility of veterans to participate in, the affordability for veterans of, or the financial stability of, those programs.

SEC. 4. Section 987.25 of the Military and Veterans Code is amended to read:

987.25. (a) In the event the department enters into a master agreement with one or more insurance companies to provide life insurance coverage for the purchasers of farms and homes from the department, the master agreement shall provide that the life insurance coverage offered under the master agreement will be offered by the insurance company or companies to disabled and nondisabled veterans on an equal basis and that no veteran shall be denied coverage because that veteran is disabled at the time of application.

(b) Any proposal to enter into, revise, amend, renew, extend, or cancel, any agreement described in this section shall be a policy change subject to subdivisions (b), (c), and (d) of Section 84.

SEC. 5. Section 987.88 of the Military and Veterans Code is amended to read:

987.88. (a) In the event the department enters into a master agreement with one or more insurance companies to provide life or disability insurance coverage for the purchasers of farms and homes from the department, the master agreement shall provide that the life insurance will be offered to purchasers who are disabled solely as a result of their qualifying military service and to nondisabled purchasers on an equal basis and that no purchaser shall be denied coverage solely because that purchaser has a qualifying military service-connected disability at the time of application. Notwithstanding Part 2 (commencing with Section 10110) of Division 2 of the Insurance Code, the life or disability insurance shall be a form of group life or group disability insurance.

(b) The master agreement may provide for maintenance of the reserves as the department, after consultation with the Insurance Commissioner, deems appropriate and prudent, and the department may use from time to time any accumulated surplus in those reserves, or any refunds or returns therefrom upon termination of the

agreement, for the purposes of this article or of any veterans general obligation or revenue bond act. Any and all acts of the department in maintaining and using the reserves consistent with this subdivision are hereby ratified and confirmed, it having at all times been the intent of the Legislature that reserves be maintained and that any surpluses therein or refunds or returns therefrom be used by the department for the purposes stated in this subdivision.

(c) Notwithstanding subdivision (b), on and after January 1, 1987, any reserves maintained under the master agreement shall not exceed a level greater than 20 percent in excess of actuarial requirements plus a reasonable contingency reserve, as determined annually by the department, and the department may contract with one or more independent actuaries or actuarial firms to assist the department in the annual determination.

(d) Any departmental proposal to enter into, revise, amend, renew, extend, or cancel, any agreement described in this section shall be a policy change subject to subdivisions (b), (c), and (d) of Section 84.

CHAPTER 1146

An act to amend Section 12330 of the Government Code, relating to state finances.

[Approved by Governor September 30, 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 hereby finds and declares the following:

(1) For many years, state bonds have been readily marketable at favorable interest rates.

(2) To continue to finance essential capital projects for the benefit of its residents, at favorable interest rates, the state must continue to maintain its excellent credit standing with bond investors.

(3) Authorizations of state debt must take into account the ability of the state to meet its total debt service requirements in light of other calls on its fiscal resources.

(b) The purpose of this act is to provide for a state debt management program through which the following occur:

(1) A state debt affordability analysis shall be made annually.

(2) Proposed capital projects that require new state debt may be evaluated on the basis of the analysis to assist the Governor and the Legislature in setting priorities among capital projects and appropriations.

SEC. 2. Section 12330 of the Government Code is amended to read:

12330. (a) At the request of either house of the Legislature, or of any committee thereof, the Treasurer shall give written information as to the condition of the State Treasury, or upon any subject relating to the duties of his or her office.

(b) The Treasurer annually shall prepare a debt affordability report, to be presented to the Governor and the Legislature by October 1 of each year.

(1) The report is intended to be a framework for the Legislature to evaluate and establish priorities for bills that propose the authorization of additional state debt supported by the General Fund, excluding self-liquidating general obligation debt, during the budget year. The report may also be used to determine the amount to appropriate for debt service for the budget year.

(2) The report shall include the following information:

(A) A listing of authorized but unissued debt that the Treasurer intends to sell during the current year and the budget year and the projected increase in debt service as a result of those sales.

(B) A description of the market for state bonds.

(C) An analysis of the ratings of state bonds.

(D) A listing of outstanding debt supported by the General Fund.

(E) A listing of authorized but unissued debt that would be supported by the General Fund.

(F) A schedule of debt service requirements for the items included in subparagraph (D).

(G) Identification of pertinent debt ratios, such as debt service to General Fund revenues, debt to personal income, debt to estimated full-value of property, and debt per capita.

(H) A comparison of the debt ratios prepared for subparagraph (G) with the comparable debt ratios for the 10 most populous states.

CHAPTER 1147

An act to amend Section 11010.05 of the Business and Professions Code, and to amend Sections 51.2, 51.3, and 51.4 of, and to add Sections 51.10, 51.11, and 51.12 to, the Civil Code, relating to civil rights.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 11010.05 of the Business and Professions Code is amended to read:

11010.05. A person who proposes to create a senior citizen housing development, as defined in Sections 51.3 and 51.11 of the Civil Code, before January 1, 1997, through phased development and marketing of subdivision interests, may apply for and obtain a public report for a phase of the subdivision as part of a senior citizen housing development even though the phase itself will not include a sufficient number of dwelling units to qualify as a senior citizen housing development. The applicant shall submit the following statement, signed under penalty of perjury, with the application for a public report:

(a) A statement of the applicant's intent that the subdivision phase shall ultimately be part of a senior citizen housing development.

(b) An explanation of the annexation of the subdivision phases for the creation of the senior citizen housing development.

(c) Evidence satisfactory to the department that the applicant owns or controls real property capable of being subdivided and annexed to the original subdivision to provide a sufficient number of dwelling units to satisfy the numerical requirements for a senior citizen housing development.

SEC. 2. Section 51.2 of the Civil Code is amended to read:

51.2. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status. Where accommodations constructed before February 8, 1982, meet the criteria for senior citizen housing specified in Section 51.4, a business establishment may establish and preserve that housing for senior citizens until January 1, 2000, in accordance with Section 51.4.

(b) This section is intended to clarify the holdings in Marina Point, Ltd. v. Wolfson (1982), 30 Cal. 3d 72, and O'Connor v. Village Green Owners Association (1983), 33 Cal. 3d 790.

(c) This section shall not apply to the County of Riverside.

SEC. 3. Section 51.3 of the Civil Code is amended to read:

51.3. (a) The Legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) The Legislature finds and declares that different age limitations for senior citizen housing are appropriate in recognition of the size of a development in relationship to the community in which it is located.

(c) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets all of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(C) Has an ownership interest in, or is in expectation of an ownership interest in, the dwelling unit within the housing development that limits occupancy, residency, or use on the basis of age.

(3) "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that meets any of the following requirements:

(A) At least 70 dwelling units, built prior to January 1, 1996, or at least 150 dwelling units built on or after January 1, 1996, in a metropolitan statistical area, as defined by the Federal Committee on Metropolitan Statistical Areas, with a population of at least 1,000 residents per square mile or 1,000,000 total residents, based on the 1990 census.

(B) At least 100 dwelling units in a metropolitan statistical area, as defined by the Federal Committee on Metropolitan Statistical Areas, with a population not to exceed 999 residents per square mile and not to exceed 399,999 total residents, based on the 1990 census.

(C) At least 35 dwelling units in any other area.

The number of dwelling units within a development includes all dwelling units developed, whether in single or multiple phases. Developments commenced after July 1, 1986, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code.

(4) "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.

(5) "Cohabitant" refers to persons who live together as husband and wife.

(6) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident.

(d) The covenants, conditions, and restrictions or other documents or written policy shall not limit occupancy, residency, or

use on the basis of age more proscriptively than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident.

(e) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 45 years of age for periods of time, not less than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(f) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident.

(g) The condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential rental property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section.

(h) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(i) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.

(j) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(k) Notwithstanding any other provision of this section, this section shall not apply to the County of Riverside.

SEC. 4. Section 51.4 of the Civil Code is amended to read:

51.4. (a) The Legislature finds and declares that the requirements for senior housing under Sections 51.2 and 51.3 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (Public Law 100-430) in recognition of the acute shortage of housing for families with children in California. The Legislature further finds and declares that the special design requirements for senior housing under Sections

51.2 and 51.3 may pose a hardship to some housing developments which were constructed before the decision in Marina Point Ltd. v. Wolfson (1982), 30 Cal. 3d 72. The Legislature further finds and declares that the requirement for specially designed accommodations in senior housing under Section 51.2 and 51.3 provides important benefits to senior citizens and also ensures that housing exempt from the prohibition of age discrimination is carefully tailored to meet the compelling societal interest in providing senior housing. Therefore, it is the intent of the Legislature to permit a narrow, time-limited exception to the requirement that senior housing be specially designed.

(b) A housing development constructed before February 8, 1982, shall be exempt from Section 51 to the extent specified in Section 51.2 if (1) it meets the requirements of Sections 51.2 and 51.3, other than the requirement that the housing be specially designed to meet the physical and social needs of senior citizens, (2) it is not practicable to meet that requirement in the relevant geographic area where the housing development is located, and (3) the housing development is necessary to provide important housing opportunities for senior citizens. As used in this section, "relevant geographic area" has the same meaning as that term is used in Section 100.304 of Title 24 of the Code of Federal Regulations.

(c) In any action under Section 51, the exemption under this section shall be sustained only if it is demonstrated through credible and objective evidence that application of a requirement for specially designed accommodations to meet the physical and social needs of senior citizens would result in depriving senior citizens in the relevant geographic area of needed and desired housing. The factors to be considered by the court in determining the applicability of this section shall include, but not be limited to, all of the following:

(1) Whether the owner or manager of the housing facility has endeavored to provide specially designed accommodations to meet the physical and social needs of senior citizens persons either directly or by some other entity. Demonstrating that these accommodations would be expensive to provide is not alone sufficient to demonstrate their impracticability.

(2) The amount of rent charged for dwellings in the housing development seeking an exemption under this section if the dwellings are rented, or the price of the dwellings if they are offered for sale.

(3) The income range of the residents of the housing development.

(4) The demand for housing for senior citizens in the affected geographic area.

(5) The range of housing choices for senior citizens within the relevant geographic area.

(6) The availability of other similarly priced housing for senior citizens in the relevant geographic area. If similarly priced senior

citizen housing with specially designed accommodations is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements for exemption under this section.

(7) The vacancy rate of the housing development.

(d) Any person who resided in, occupied, or used the housing subject to this section prior to January 1, 1990, shall not be deprived of the right to continue that residency, occupancy, or use as the result of this section.

(e) This section shall not apply to the County of Riverside.

SEC. 5. Section 51.10 is added to the Civil Code, to read:

51.10. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. A business establishment may establish and preserve housing for senior citizens, pursuant to Section 51.11, except housing as to which Section 51.11 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status.

(b) This section is intended to clarify the holdings in Marina Point, Ltd., v. Wolfson (1982), 30 Cal. 3d 721, and O'Connor v. Village Green Owners Association (1983), 33 Cal. 3d 790.

(c) This section shall only apply to the County of Riverside.

SEC. 6. Section 51.11 is added to the Civil Code, to read:

51.11. (a) The Legislature finds and declares that this section is essential to establish and preserve housing for senior citizens. There are senior citizens who need special living environments, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets all of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(C) Has an ownership interest in, or is in expectation of an ownership interest in, the dwelling unit within the housing development that limits occupancy, residency, or use on the basis of age.

(3) "Qualified permanent resident" also means a permanently physically or mentally impaired or terminally ill adult who is a

dependent child of the qualifying resident, senior citizen, or qualified permanent resident as defined in paragraph (2) of this subdivision, unless the board of directors or other governing body of the senior citizen housing development determines that there are special circumstances to disallow this particular dependent child as a qualified permanent resident. Special circumstances means a condition wherein this dependent child is or may be harmful to himself or herself or others.

(4) "Senior citizen housing development" means a residential development developed with more than 20 units as a senior community by its developer, zoned as a senior community by a local governmental entity, or characterized as a senior community in its governing documents, as these are defined in Section 1351, or qualified as a senior community under the federal Fair Housing Amendment Act of 1988, as amended. Developments commenced after July 1, 1986, and before January 1, 1997, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. However, developments may elect to amend their governing documents to become a senior citizen housing development after the expiration date of the public report.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.

(6) "Cohabitant" refers to persons who live together as husband and wife.

(7) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident.

(c) The covenants, conditions, and restrictions or other documents or written policy shall not limit occupancy, residency, or use on the basis of age more restrictively than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident or permitted health care resident.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not more than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident.

(f) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock

cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(g) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on or after January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section by Senate Bill 2097 of the 1995–96 Regular Session.

(h) A housing development may qualify as a senior citizen housing development under this section even though, as of January 1, 1997, it does not meet the definition of a senior citizen housing development specified in subdivision (b), if the development complies with that definition for every unit that becomes occupied after January 1, 1997, and if the development was once within that definition, and then became noncompliant with the definition as the result of any one of the following:

(1) The development was ordered by a court or a local, state, or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(2) The development received a notice of a pending or proposed action in, or by, a court, or a local, state, or federal enforcement agency, which action could have resulted in the development being ordered by a court or a state or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(3) The development agreed to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development by entering into a stipulation, conciliation agreement, or settlement agreement with a local, state, or federal enforcement agency or with a private party who had filed, or indicated an intent to file, a complaint against the development with a local, state, or federal enforcement agency, or file an action in a court.

(4) The development allowed persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development on the advice of counsel in order to prevent the possibility of an action being filed by a private party or by a local, state, or federal enforcement agency.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(j) This section shall only apply to the County of Riverside.

SEC. 7. Section 51.12 is added to the Civil Code, to read:

51.12. (a) The Legislature finds and declares that the requirements for senior housing under Sections 51.10 and 51.11 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (Public Law 100-430).

(b) Any person who resided in, occupied, or used the housing subject to Section 51.4 prior to January 1, 1990, shall not be deprived of the right to continue that residency, or occupancy, or use as the result of this section.

(c) This section shall only apply to the County of Riverside.

SEC. 8. The Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution due to the unique circumstances that, in the County of Riverside, there is an unusually large concentration of senior communities, and that those senior communities have been subject to an unusually large number of civil enforcement actions and litigation by private parties, notwithstanding the good faith beliefs of those communities that they were in compliance with the law. The Legislature therefore finds and declares that these unique circumstances justify making the provisions of Senate Bill 1097 of the 1995–96 Regular Session applicable only in the County of Riverside.

CHAPTER 1148

An act to amend Sections 1090, 35120, and 72425 of the Education Code, relating to governing boards of local education agencies.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 1090 of the Education Code is amended to read:

1090. (a) The board of supervisors may allow, as compensation, to each member of the county board of education a sum not to exceed the following amounts:

(1) In any class one county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed six hundred dollars ($600) per month.

(2) In any class two county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) per month.

(3) In any class three county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed three hundred dollars ($300) per month.

(4) In any class four county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two hundred dollars ($200) per month.

(5) In any class five, class six, class seven, or class eight county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed one hundred sixty dollars ($160) per month.

(b) Any member who does not attend all meetings held in any month may receive as compensation for his or her services an amount not greater than the maximum amount allowed by subdivision (a) divided by the number of meetings held, and multiplied by the number of meetings actually attended.

(c) The amount of compensation shall be determined by the county board of supervisors, or, in a county having a fiscally independent county board of education, by the county board of education.

(d) A member of a county board of education may be paid for any meeting for which he or she is absent if the board by resolution duly adopted and included within its minutes finds that at the time of the meeting he or she was performing services outside the meeting on behalf of the board, he or she was ill or on jury duty, or the absence was due to a hardship deemed acceptable by the board.

(e) There may also be allowed to each member who uses a privately owned automobile in the discharge of necessary official duties as a member of the county board of education, the same amount as allowed by any county official in the performance of his or her official duties. The mileage rate allowed in this section shall be based on the total mileage claimed in a calendar month.

(f) For purposes of this section, the classification of counties shall be determined pursuant to Section 1205.

SEC. 2. Section 35120 of the Education Code is amended to read:

35120. (a) (1) In any school district in which the average daily attendance for the prior school year exceeded 400,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two thousand dollars ($2,000) per month.

(2) In any school district that is not located in a city and county, and in which the average daily attendance for the prior school year exceeded 60,000, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held, a sum not to exceed one thousand five hundred dollars ($1,500) in any month.

(3) In any school district in which the average daily attendance for the prior school year was 60,000, or less, but more than 25,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed seven hundred fifty dollars ($750) in any month.

(4) In any school district in which the average daily attendance for the prior school year was 25,000, or less, but more than 10,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) in any month.

(5) In any school district in which the average daily attendance for the prior school year was 10,000 or less but more than 1,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two hundred forty dollars ($240) in any month.

(6) In any school district in which the average daily attendance for the prior school year was 1,000 or less but more than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars ($120) in any month.

(7) In any school district in which the average daily attendance for the prior school year was less than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed sixty dollars ($60) per month.

Any member who does not attend all meetings held in any month may receive, as compensation for his or her services, an amount not greater than the maximum amount allowed by this subdivision divided by the number of meetings held and multiplied by the number of meetings actually attended.

(b) The compensation of members of the governing board of a school district newly organized or reorganized shall be governed by subdivision (a). For this purpose, the total average daily attendance in all of the schools of the district in the school year in which the organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the prior school year.

(c) A member may be paid for any meeting when absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting he or she is performing services outside the meeting for the school district or districts, he or she was ill or on jury duty, or the absence was due to a hardship deemed acceptable by the board.

(d) The compensation shall be a charge against the funds of the school district. If the city board of education or the governing board of the district is the governing board of more than one school district, the compensation shall be charged against and paid by the respective school districts in the same proportion as the salary of the city superintendent of schools is charged against them. Compensation shall be reduced by an amount equal to any salary or compensation paid to the members of the city board of education from any funds of the city.

SEC. 3. Section 72425 of the Education Code is amended to read:

72425. (a) (1) In any community college district that is not located in a city and county, and in which the average daily attendance for the prior school year exceeded 60,000, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held by the board, a sum not to exceed one thousand five hundred dollars ($1,500) in any month.

(2) In any community college district in which the average daily attendance for the prior school year was 60,000 or less, but more than 25,000, each member of the governing board of the district who actually attends all meetings held by the board, may receive as compensation for his or her services a sum not to exceed seven hundred fifty dollars ($750) in any month.

(3) In any community college district in which the average daily attendance for the prior school year was 25,000 or less, but more than 10,000, each member of the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) in any month.

(4) In any community college district in which the average daily attendance for the prior school year was 10,000 or less, but more than 1,000, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed two hundred forty dollars ($240) in any month.

(5) In any community college district in which the average daily attendance for the prior school year was 1,000 or less, but more than 150, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars ($120) in any month.

Any member of a governing board who does not attend all meetings held by the board in any month may receive, as compensation for his or her services, an amount not greater than a pro rata share of the number of meetings actually attended based upon the maximum compensation authorized by this subdivision.

(b) The compensation of members of the governing board of a community college district newly organized or reorganized shall be

governed by subdivision (a). For this purpose, the total average daily attendance in all of the community colleges of the district in the school year in which the organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the prior school year.

(c) A member may be paid for any meeting when absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting he or she is performing services outside the meeting for the community college district, he or she was ill or on jury duty, or the absence was due to a hardship deemed acceptable by the board. The compensation shall be a charge against the funds of the district.

CHAPTER 1149

An act to add Section 6108 to the Public Contract Code, relating to state procurement.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

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

(a) The people of California do not support the import of any goods made by forced, convict, or indentured labor, not only because it is a cruel suppression of the human right of free labor and employment practices, but also because it creates an unfair trade advantage for the forced, convict, or indentured labor country.

(b) The federal Smoot-Hawley Tariff Act of 1930, while prohibiting the importation of any goods produced in whole or in part by forced, convict, or indentured labor, does not require importers to provide certificates of origin at the time of importation to affirm and guarantee no forced, convict, or indentured labor content.

(c) The federal Smoot-Hawley Tariff Act of 1930 also does not require the United States Customs Service to have an active, self-initiated foreign surveillance program of detecting forced, convict, or indentured labor-made goods and preventing their entry into the United States, but relies primarily upon complaints made by the public or other interested groups.

(d) The State of California wholeheartedly supports the prohibition on imports produced in whole or in part by forced, convict, or indentured labor and shall not knowingly acquire any of those goods.

SEC. 2. Section 6108 is added to the Public Contract Code, to read:

6108. (a) Every contract entered into by any state agency for the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, shall specify that no foreign-made equipment, materials, or supplies furnished to the state pursuant to the contract may be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. The contractor shall agree to comply with this provision of the contract.

(b) (1) Any contractor contracting with the state who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the state were produced in whole or part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a contract pursuant to subdivision (a), may, subject to subdivision (c), have any or all of the following sanctions imposed:

(A) The contract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the state agency to which the equipment, materials, or supplies were provided.

(B) The contractor may be assessed a penalty which shall be the greater of one thousand dollars ($1,000) or an amount equaling 20 percent of the value of the equipment, materials, or supplies that the state agency demonstrates were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction and that were supplied to the state agency under the contract.

(C) The contractor may be removed from the bidder's list for a period not to exceed 360 days.

(2) Any moneys collected pursuant to this subdivision shall be deposited into the General Fund.

(c) (1) When imposing the sanctions described in subdivision (b), the contracting agency shall notify the contractor of the right to a hearing if requested within 15 days of the date of the notice. The hearing shall be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judge shall take into consideration any measures the contractor has taken to ensure compliance with this section, and may waive any or all of the sanctions if it is determined that the contractor has acted in good faith.

(2) The agency shall be assessed the cost of the administrative hearing, unless the agency has prevailed in the hearing, in which case the contractor shall be assessed the cost of the hearing.

(d) Any state agency that investigates a complaint against a contractor for violation of this section shall limit its investigation to evaluating the information provided by the person or entity submitting the complaint and the information provided by the contractor.

(e) For purposes of this section, the term "forced labor" shall have the same meaning as in Section 1307 of Title 19 of the United States Code.

CHAPTER 1150

An act to repeal and add Section 5491.1 of the Business and Professions Code, relating to on-premises signs.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 5491.1 of the Business and Professions Code is repealed.

SEC. 2. Section 5491.1 is added to the Business and Professions Code, to read:

5491.1. (a) Any city or county adopting or amending any ordinance or regulation that regulates or prohibits the use of any on-premises advertising display that is more restrictive than existing law, shall include provisions in that ordinance or regulation for the identification and inventorying of all displays within its territorial limits that are determined to be illegal or abandoned pursuant to the law that is in effect prior to the adoption of, or amendment to, the ordinance or regulation.

(b) The required identification and inventory shall commence not later than 120 days from the date on which the ordinance or regulation is adopted or amended and shall be completed in a timely manner. The population of the city or county, as determined by the most recent federal census, the number of on-premise advertising displays located within the city or county, and other relevant factors may serve as a guide for the purposes of determining what constitutes "a timely manner" for the purposes of this subdivision.

(c) (1) Upon the completion of the required identification and inventory, the city or county shall consider, at a public hearing with opportunity for public comment, whether there is a need for the ordinance or regulation described in subdivision (a) to take effect.

(2) (A) Any applicable amortization schedule for the ordinance or regulation adopted or amended pursuant to this section shall not expire until at least six months after the date on which the city or county confirms, pursuant to paragraph (1), that there is a continuing need for that ordinance or regulation to take effect, unless the amortization period specified in the ordinance is for a longer term, in which case the remaining term shall apply.

(B) Until the city or county provides, pursuant to paragraph (1), that there is a continuing need for the ordinance or regulation to take

effect, the new ordinance shall not apply to a change of copy, change of color, maintenance, or repair made to a sign which conformed to the prior ordinance unless those changes, maintenance, or repairs involve a change in location or structure of the sign.

(d) An identification and inventory is not required if a city or county has undertaken and completed an identification and inventory of illegal or abandoned displays not more than three years prior to the date on which the ordinance or regulation described in subdivision (a) is adopted or amended.

(e) This section does not apply if a city or county adopts or amends an ordinance or regulation that regulates only new on-premises advertising displays. For the purposes of this section, a "new on-premises advertising display" means a display whose structure or housing has not been permanently affixed to its intended premise on the date on which the ordinance or regulation is adopted.

CHAPTER 1151

An act to amend Sections 7615, 7616, 7617, 7618, 7619, 7621, 7622, 7624, 7628, 7630, 7641, 7643, 7649, 7660, 7662, 7664, 7665, 7666, 7667, 7668, 7669, 7670, 7708, 7711, 7716, 7717, 7717.5, 7718, 7729, 7735, 7736, 7737, 7737.3, 7738, 7739, 7740.5, and 7745 of, to add Sections 7616.2, 7617.1, 7619.2, 7619.3, 7622.2, 7622.3, 7635, and 7651 to, and to repeal Section 7666.5 of, the Business and Professions Code, relating to funeral establishments, and making an appropriation therefor.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 7615 of the Business and Professions Code is amended to read:

7615. A funeral director is a person engaged in or conducting, or holding himself or herself out as engaged in any of the following:

(a) Preparing for the transportation or burial or disposal, or directing and supervising for transportation or burial or disposal of human remains.

(b) Maintaining an establishment for the preparation for the transportation or disposition or for the care of human remains.

(c) Using, in connection with his or her name, the words "funeral director," or "undertaker," or "mortician," or any other title implying that he or she is engaged as a funeral director.

SEC. 2. Section 7616 of the Business and Professions Code is amended to read:

7616. (a) A licensed funeral establishment is a place of business conducted in a building or separate portion of a building having a

specific street address or location and devoted exclusively to those activities as are incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the funeral, transportation, burial or other disposition of human remains and including, but not limited to, any of the following:

(1) A suitable room for the storage of human remains, or

(2) A preparation room equipped with a sanitary flooring and necessary drainage and ventilation and containing necessary instruments and supplies for the preparation, sanitation, or embalming of human remains for burial or transportation.

(b) Licensed funeral establishments under common ownership or by contractual agreement within close geographical proximity of each other shall be deemed to be in compliance with the requirements of paragraph (1) or (2) of subdivision (a) if at least one of the establishments has a room described in those paragraphs.

(c) Except as provided in Section 7609 of this code, and except accredited embalming schools and colleges engaged in teaching students the art of embalming, no person shall operate or maintain or hold himself or herself out as operating or maintaining any of the facilities specified in paragraph (2) of subdivision (a) of this section, unless he or she is licensed as a funeral director.

(d) Nothing in this section shall be construed to require a funeral establishment to conduct its business or financial transactions at the same location as its preparation or storage of human remains.

(e) Nothing in this chapter shall be deemed to render unlawful the conduct of any ambulance service from the same premises as those on which a licensed funeral establishment is conducted, including the maintenance in connection with the funeral establishment of garages for the ambulances and living quarters for ambulance drivers.

SEC. 3. Section 7616.2 is added to the Business and Professions Code, to read:

7616.2. A licensed funeral establishment shall at all times employ a licensed funeral director to manage, direct, or control its business or profession. Notwithstanding any other provisions of this chapter, licensed funeral establishments within close geographical proximity of each other, may request the board to allow a licensed funeral director to manage, direct, or control the business or profession of more than one facility.

SEC. 4. Section 7617 of the Business and Professions Code is amended to read:

7617. The business of a licensed funeral establishment shall be conducted and engaged in at a fixed place or facility.

No person, partnership, association, corporation, or other organization shall open or maintain a place or establishment at which to engage in or conduct, or hold himself or herself or itself out as engaging in or conducting, the business of a funeral establishment without a license.

SEC. 4.5. Section 7617.1 is added to the Business and Professions Code, to read:

7617.1. The applicant for a funeral establishment license, or in the case the applicant is an association, partnership, or corporation, the officer or partner appearing therefor, shall be at least 18 years of age and shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

SEC. 5. Section 7618 of the Business and Professions Code is amended to read:

7618. An application for a funeral director's license shall be written on a form provided by the board, verified by the applicant, accompanied by the fee fixed by this chapter and filed at its Sacramento office.

SEC. 6. Section 7619 of the Business and Professions Code is amended to read:

7619. The applicant for a funeral director's license shall be at least 18 years of age, possess an associate of arts or science degree, or the equivalent, or a higher level of education as recognized by the Western Association of Colleges and Universities, or any other nationally recognized accrediting body of colleges and universities, and shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

SEC. 7. Section 7619.2 is added to the Business and Professions Code, to read:

7619.2. The board shall grant a funeral director's license to any applicant who complies with this article, notwithstanding Section 7619, if the applicant can demonstrate that he or she has complied with Section 7622 on or before July 1, 1999.

SEC. 7.5. Section 7619.3 is added to the Business and Professions Code, to read:

7619.3. No licensed funeral director shall engage in or conduct, or hold himself or herself out as engaging in or conducting, the activities of a funeral director without being employed by, or without being a sole proprietor of, a licensed funeral establishment.

SEC. 8. Section 7621 of the Business and Professions Code is amended to read:

7621. The applicant shall also furnish the board with satisfactory proof that the facility in which he or she intends to conduct business as a funeral director is or will be constructed, equipped and maintained in all respects as a licensed funeral establishment as defined in this chapter.

SEC. 9. Section 7622 of the Business and Professions Code is amended to read:

7622. Before an individual is granted a funeral director's license, he or she shall successfully pass an examination upon the following subjects:

(a) The signs of death.

(b) The manner by which death may be determined.

(c) The laws governing the preparation, burial and disposal of human remains, and the shipment of bodies dying from infectious or contagious diseases.

(d) Local health and sanitary ordinances and regulations relating to funeral directing and embalming.

SEC. 10. Section 7622.2 is added to the Business and Professions Code, to read:

7622.2. No person, partnership, association, corporation, or other organization shall open or maintain a place or establishment at which to engage in or conduct, or hold himself, herself, or itself out as engaging in or conducting, the activities of a funeral director without a license.

SEC. 11. Section 7622.3 is added to the Business and Professions Code, to read:

7622.3. The board shall adopt regulations requiring continuing education of 14 hours every two years for licensed funeral directors.

SEC. 12. Section 7624 of the Business and Professions Code is amended to read:

7624. Not more than one person, partnership, association, corporation, or other organization engaged in business as a funeral establishment shall transact business in one specific funeral facility.

SEC. 13. Section 7628 of the Business and Professions Code is amended to read:

7628. Any person, partnership, association, corporation, or other organization desiring to change the location of his, hers, or its licensed funeral establishment shall apply therefor on forms furnished by the board and shall include a fee fixed by this chapter.

The application shall be granted by the executive officer upon the filing with the board of a favorable report, approved by the executive officer, from a board member, except a public member, or inspector concerning the physical status or plans and specifications of the proposed licensed funeral establishment to the effect that it conforms to the requirements of this article. Every application so granted shall be submitted for approval at the next meeting of the board after the issuance thereof, and no application for change of place of business shall become permanent until approved by the board.

SEC. 14. Section 7630 of the Business and Professions Code is amended to read:

7630. A funeral establishment's license may be assigned upon payment of the fee fixed by this chapter and upon compliance with Section 7616.2. However, an audit shall be conducted of the firm's preneed trust funds and any shortages in those funds shall be funded.

The assignee has the right to renew the license.

SEC. 15. Section 7635 is added to the Business and Professions Code, to read:

7635. Any person employed by, or an agent of, a licensed funeral establishment, who consults with the family or representatives of a family of a deceased person for the purpose of arranging for services

as set forth in subdivision (a) of Section 7615, shall receive documented training and instruction which results in a demonstrated knowledge of all applicable federal and state laws, rules, and regulations including those provisions dealing with vital statistics, the coroner, anatomical gifts, and other laws, rules, and regulations pertaining to the duties of a funeral director. A written outline of the training program, including documented evidence of the training time, place, and participants, shall be maintained in the funeral establishment and shall be available for inspection and comment by an inspector of the board.

SEC. 16. Section 7641 of the Business and Professions Code is amended to read:

7641. It is unlawful for any person to embalm a body, or engage in, or hold himself or herself out as engaged in practice as an embalmer, unless he or she is licensed by the board; provided, however, that this section shall have no effect on students and instructors of embalming in embalming colleges approved by the board.

SEC. 17. Section 7643 of the Business and Professions Code is amended to read:

7643. In order to qualify for a license as an embalmer, the applicant shall comply with all of the following requirements:

(a) Be over 18 years of age.

(b) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(c) Furnish proof showing completion of a high school course or instead he or she may furnish the board with evidence that he or she has been licensed and has practiced as an embalmer for a minimum of three years within the seven years preceding his or her application in any other state or country and that the license has never been suspended or revoked for unethical conduct.

(d) Have completed at least two years of apprenticeship under an embalmer licensed and engaged in practice as an embalmer in this state in a funeral establishment which shall have been approved for apprentices by the board and while so apprenticed shall have assisted in embalming not fewer than 100 human remains; provided, however, that a person who has been licensed and has practiced as an embalmer for a minimum of three years within the seven years preceding his or her application in any other state or country and whose license has never been suspended or revoked for unethical conduct shall not be required to serve any apprenticeship in this state.

(e) Have successfully completed a course of instruction of not less than one academic year in an embalming school approved by the board and accredited by the American Board of Funeral Service Education.

SEC. 21. Section 7649 of the Business and Professions Code is amended to read:

7649. Except as provided in Section 10375 of the Health and Safety Code, whenever the name of any licensed embalmer is subscribed to any certificate, the purport of which is that he or she has performed any act mentioned in the certificate, the licensed embalmer shall actually sign his or her name thereto.

SEC. 22. Section 7651 is added to the Business and Professions Code, to read:

7651. The board shall adopt regulations requiring continuing education of 14 hours every two years for licensed embalmers.

SEC. 23. Section 7660 of the Business and Professions Code is amended to read:

7660. An apprentice embalmer is a person engaged in the study of embalming under the instruction and supervision of a licensed embalmer who has had at least two years' practical experience as a California licensed embalmer.

SEC. 24. Section 7662 of the Business and Professions Code is amended to read:

7662. In order to qualify as an apprentice embalmer, an applicant shall comply with all of the following requirements:

(a) Be over 18 years of age.

(b) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(c) Furnish proof showing completion of a high school course or instead he or she may furnish the board with evidence that he or she has been licensed and has practiced as an embalmer for a minimum of three years within the seven years preceding his or her application in any other state or country and that the license has never been suspended or revoked for unethical conduct.

SEC. 25. Section 7664 of the Business and Professions Code is amended to read:

7664. Certificates of apprenticeship issued pursuant to this article shall expire when the holder has been issued a license as an embalmer, or six years from the date of registration, whichever first occurs. The certificates may not be renewed, but an apprentice embalmer who has not completed his or her term of apprenticeship at the time his or her certificate expires may apply for reregistration upon compliance with Section 7661. The board may, when the circumstances warrant, allow an apprentice credit under a reregistration for the time actually served under a previous registration, but no reregistration shall have the effect of continuing the term of apprenticeship beyond the period specified in Sections 7666 and 7666.5.

SEC. 26. Section 7665 of the Business and Professions Code is amended to read:

7665. All registered apprentice embalmers shall be under the supervision and control of the board and shall comply with the following requirements during their period of apprenticeship:

(a) Shall file a report of apprenticeship as follows:

(1) On or before January 15 of each year covering the period of apprenticeship ending as of December 31 preceding.

(2) Upon change of supervising embalmer or employer, or both.

(3) Upon completion of apprenticeship.

(4) Upon application for leave of absence for a period in excess of 15 days.

(5) Upon suspending apprenticeship to attend embalming college.

(6) Upon application for reregistration after suspension or revocation of registration where complete report of previous registration has not been filed.

(b) The information contained in the report shall consist of a concise summary of the work done by the apprentice during the period covered thereby, shall be verified by the apprentice and certified to as correct by his or her supervising embalmer and employer. Upon request of the board, each funeral director in whose establishment an apprenticeship is being, or has been, served, and each embalmer under whose instruction or supervision an apprenticeship is being, or has been served, shall promptly file with the board a report or such other information as may be requested relating to the apprenticeship. Failure to comply with the request is cause for revocation by the board of the approval granted to the funeral director or embalmer for the training of apprentices and is also a cause for disciplinary action against the funeral director or embalmer.

SEC. 27. Section 7666 of the Business and Professions Code is amended to read:

7666. (a) The term of apprenticeship shall be two years; provided, however, that if an apprentice after having served his or her apprenticeship fails to pass the examination for an embalmer's license he or she may continue for one additional term of apprenticeship, which shall be the maximum apprenticeship permitted and provided further that an apprentice may, upon filing an application therefor, be permitted to continue the apprenticeship for a period not to exceed six months, if approved, for any of the following reasons:

(1) While awaiting the processing of applications submitted to the board.

(2) While awaiting notification of grades of embalmers' examinations given by the board.

(3) While awaiting the commencement of a class of an embalming school or college when the apprentice intends to enroll in the school or college.

Applications filed for an extension of apprenticeship shall be filed by the applicant with the Sacramento office of the board not less than 15 days prior to the date the applicant requests the extension to commence.

(b) Terms of apprenticeship may be served before, after, or divided by the embalming college course at the option of the apprentice; provided, however, that the term of apprenticeship must be completed, excluding time spent in active military service, within six years from the date of original registration, or from the date an apprentice successfully passes the examination for embalmer's license required in Section 7646 of this code, whichever first occurs, and provided further that if the term of apprenticeship is not completed within the six-year period, the board may require that the applicant serve the additional term of apprenticeship, not to exceed two years.

(c) A student attending an embalming college may register as an apprentice during his or her college term but shall receive no credit for apprenticeship on the term required by this code unless he or she is also a full-time employee of a funeral director.

(d) An apprentice while serving his or her required term of apprenticeship shall be a full-time employee in the funeral establishment in which he or she is employed.

SEC. 28. Section 7666.5 of the Business and Professions Code is repealed.

SEC. 29. Section 7667 of the Business and Professions Code is amended to read:

7667. (a) The board shall have the power to grant leaves of absence and extensions of leaves of absences and approve absences during the term of apprenticeship.

(b) A leave of absence, including any extensions, shall not be approved for a longer period than an aggregate of one year.

(c) No credit will be given to an apprentice on his or her apprenticeship for the period during which he or she is absent from duty on leave.

(d) Application for a leave of absence and for an extension thereof shall be made by the apprentice on a form provided by the board.

(e) Upon termination of a leave of absence, the apprentice shall report that fact to the board within 10 days of his or her resumption of apprenticeship by returning to the Sacramento office of the board, his or her certificate of registration accompanied by a statement as to the resumption of apprenticeship which statement shall be certified as correct by the funeral director in whose establishment he or she is to resume his or her duties and by the embalmer under whose supervision he or she is to resume his or her apprenticeship.

(f) Failure to report within 10 days after the expiration date of any leave of absence shall be cause for cancellation of the registration of an apprentice.

SEC. 30. Section 7668 of the Business and Professions Code is amended to read:

7668. The board may suspend or revoke a certificate of apprenticeship, after notice and upon complaint and hearing in

accordance with the provisions of Article 6, if the apprentice is guilty of any of the following acts or omissions:

(a) Failure to devote full-time employment to the duties of his or her apprenticeship.

(b) Failure to make any report required by law to the board.

(c) Absence from duty except as provided in this code.

(d) Being on duty as an apprentice while under the influence of liquor.

(e) Disobedience of proper orders or instructions of his or her superior.

(f) Violation of any provision of this chapter or any rule or regulation of the board.

(g) Soliciting business for a funeral director or for an embalmer in violation of this chapter.

(h) Fraud or misrepresentation in obtaining a certificate of registration as an apprentice.

(i) Conviction of a crime substantially related to the qualifications, functions and duties of an apprentice, in which case the record of conviction, or a certified copy, shall be conclusive evidence of the conviction.

SEC. 31. Section 7669 of the Business and Professions Code is amended to read:

7669. An apprentice who has had his or her certificate of apprenticeship suspended or revoked may, within one year after the suspension or revocation apply for reregistration upon compliance with the law in effect at the time he or she so applies and payment of the apprentice application fee fixed by this chapter. No reregistration shall have the effect of continuing an apprenticeship beyond the period specified in Section 7666.

The board may, when the circumstances warrant, allow an apprentice credit under a reregistration for the time actually served under a previous registration, but if the previous registration has been suspended or revoked for unprofessional conduct, not more than 75 percent of the time previously served shall be credited on the reregistration.

SEC. 32. Section 7670 of the Business and Professions Code is amended to read:

7670. (a) The apprenticeship required by this article shall be served in a licensed funeral establishment that shall have been previously approved for apprenticeship training by the board. In order to qualify for approval the funeral director shall submit to the board an application, accompanied by the fee fixed by this chapter, showing:

(1) That not less than 50 human remains per apprentice employed have been embalmed in the establishment during the 12 months immediately preceding the date of the application.

(2) That the applicant has, and will continue to have, in full-time employment, for each two apprentices employed in his or her

establishment, a California embalmer who has had not less than two years' practical experience as a California licensed embalmer immediately preceding the date of the application.

(3) That the licensed funeral establishment of that applicant meets the requirements of law as to equipment, cleanliness and sanitation as determined by an inspection report filed with the board.

(b) Licensed funeral establishments under common ownership within close geographical proximity of each other may request any of the following from the board:

(1) To be treated in aggregate for the purpose of meeting the requirements of paragraph (1) of subdivision (a).

(2) To designate one additional supervising embalmer per registered apprentice.

(3) To allow a registered apprentice to serve in any or all of the licensed funeral establishments requested and approved pursuant to this section.

(c) Approval granted under this section shall be renewed annually upon application by the funeral director, showing continued compliance with the foregoing provisions of this section, filed with the board not later than January 15 of each year, which application shall be acted upon by the board at its first meeting thereafter. An application for renewal shall be accompanied by the fee fixed by this chapter.

SEC. 33. Section 7708 of the Business and Professions Code is amended to read:

7708. The board, after a hearing, may deny the application of a funeral establishment, funeral director, embalmer, or apprentice embalmer on proof that the applicant has committed acts or crimes constituting grounds for denial of licensure under Section 480. The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction.

SEC. 34. Section 7711 of the Business and Professions Code is amended to read:

7711. When a funeral establishment, funeral director or embalmer has had his, or her, or its license suspended, canceled, or revoked by the board, the board, upon written application by the licensee affected, upon not less than 10 days' notice to all parties of record in the particular case, and after hearing all evidence offered in support of and in opposition to that application, may, in its discretion, and upon those terms as it may deem just, reinstate the applicant.

SEC. 35. Section 7716 of the Business and Professions Code is amended to read:

7716. Every funeral establishment, funeral director or embalmer, or the agents or representatives thereof, who, after a death or while a death is impending, pays, offers to pay or causes to be paid, directly or indirectly, any sum of money or other valuable consideration for the securing of business is guilty of a misdemeanor.

SEC. 36. Section 7717 of the Business and Professions Code is amended to read:

7717. Every person, who pays or causes to be paid or offers to pay to any funeral establishment, funeral director or embalmer, or to the agent, assistant or employee of either, any commission or bonus or rebate or other thing of value in consideration of the funeral establishment, funeral director or embalmer recommending or causing human remains to be disposed of in any crematory, mausoleum or cemetery, is guilty of a misdemeanor.

SEC. 37. Section 7717.5 of the Business and Professions Code is amended to read:

7717.5. Every person who pays or causes to be paid or offers to pay to any funeral establishment, funeral director or embalmer, or to the agent, assistant or employee of either, any commission or bonus or rebate or other thing of value in consideration of the funeral establishment, funeral director or embalmer recommending or causing the purchase of flowers from any particular florist or dealer in flowers, for use in connection with a funeral service, is guilty of a misdemeanor; provided, that this section shall not apply to a funeral establishment or funeral director who owns or operates a flower shop as a part of his, her or its funeral business, or to his, her or its agents or employees.

SEC. 38. Section 7718 of the Business and Professions Code is amended to read:

7718. Every person who, after a death or while a death is impending, solicits or accepts any sum of money or other valuable consideration, directly or indirectly, from a funeral establishment, funeral director or embalmer, his, her, or its agent or representative, in order that the funeral establishment, funeral director or embalmer might obtain business, is guilty of a misdemeanor.

SEC. 39. Section 7729 of the Business and Professions Code is amended to read:

7729. The amount of the fees prescribed by this chapter shall be fixed according to the following schedule with the minimum amount specified being the amount fixed on January 1, 1988.

(a) The application fee for a funeral director's license shall be not less than one hundred dollars ($100) and not more than two hundred dollars ($200).

(b) The application fee for change of location of a funeral establishment's license shall be not less than one hundred fifty dollars ($150) and not more than two hundred fifty dollars ($250).

(c) The application fee for permission to assign a funeral establishment's license shall be not less than two hundred dollars ($200) and not more than three hundred dollars ($300).

(d) The license renewal fee payable by a licensed funeral director shall be not less than one hundred dollars ($100) and not more than two hundred dollars ($200). The fee for a delinquent renewal of a

funeral director's license shall be 150 percent of the timely renewal fee.

(e) The application fee for an embalmer's license and the examination for the license shall be not less than one hundred dollars ($100) and not more than one hundred fifty dollars ($150).

(f) The renewal fee payable by a licensed embalmer shall be not less than seventy-five dollars ($75) and not more than one hundred twenty-five dollars ($125). The fee for a delinquent renewal of an embalmer's license shall be 150 percent of the timely renewal fee.

(g) The application fee for a certificate of registration as an apprentice embalmer shall be not less than thirty dollars ($30) and not more than sixty dollars ($60).

(h) The fee for an application by a funeral establishment for approval to train apprentice embalmers and for renewal of that approval shall be not less than fifty dollars ($50) and not more than one hundred dollars ($100).

(i) The application fee for a funeral director's examination shall be not less than seventy-five dollars ($75) and not more than one hundred dollars ($100).

(j) The fee for a timely filing of an individual report or a combined report on preneed trust funds shall be not less than one hundred dollars ($100) and not more than two hundred dollars ($200). The fee for a late filing of any report on preneed trust funds shall be 150 percent of the applicable timely fee.

(k) The application fee for permission to change the name appearing on a funeral establishment's license shall be not less than one hundred dollars ($100) and not more than two hundred dollars ($200), and for permission to change the name on any other license or certificate, not less than twenty dollars ($20) and not more than forty dollars ($40).

(*l*) The application fee for a duplicate funeral director's license, a duplicate funeral establishment's license, a duplicate embalmer's license, or a duplicate certificate of registration as an apprentice embalmer, shall be not less than twenty dollars ($20) and not more than forty dollars ($40).

(m) The fee for filing a report of a change of corporate officers, managers, or preneed trust fund trustees shall be not less than twenty-five dollars ($25) and not more than fifty dollars ($50).

(n) The application fee for a funeral establishment license shall be not less than three hundred dollars ($300) and not more than four hundred dollars ($400).

(o) The license renewal fee for a licensed funeral establishment shall be not less than three hundred dollars ($300) nor more than four hundred dollars ($400).

SEC. 40. Section 7735 of the Business and Professions Code is amended to read:

7735. No funeral establishment licensed under the laws of the State of California, or the agents or employees of a funeral

establishment, shall enter into or solicit any preneed arrangement, contract or plan, hereinafter referred to as "contract," requiring the payment to the licensee of money or the delivery to the licensee of securities to pay for the final disposition of human remains or for funeral services or for the furnishing of personal property or funeral merchandise, wherein the use or delivery of those services, property or merchandise is not immediately required, unless the contract requires that all money paid directly or indirectly and all securities delivered under that agreement or under any agreement collateral thereto, shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms; provided, however, that any payment made or securities deposited pursuant to this article shall be released upon the death of the person for whose benefit the trust was established as provided in Section 7737. The income from the corpus may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee, to be determined by the board, and to establish a reserve of not to exceed 10 percent of the corpus as a revocation fee in the event of cancellation on the part of the beneficiary.

None of the trust corpus shall be used for payment of any commission nor shall any of the trust corpus be used for other expenses of trust administration.

SEC. 41. Section 7736 of the Business and Professions Code is amended to read:

7736. For the purposes of this article the term "trustee" shall mean any banking institution or trust company legally authorized and empowered by the State of California to act as trustee in the handling of trust funds or not less than three persons one of whom may be an employee of the funeral establishment; the word "trustor" shall mean any person who pays the money or deposits the securities used for those preneed arrangements; the term "beneficiary" shall be the person for whom the funeral services are arranged; the words "corpus of the trust" shall include all moneys paid and securities delivered pursuant to the provisions of the article.

SEC. 42. Section 7737 of the Business and Professions Code is amended to read:

7737. All securities purchased by the trustor for deposit in trust and all money received from the trustor for deposit in trust shall be placed in trust with a trustee within 30 days of their receipt by the funeral establishment pursuant to a trust agreement executed by the funeral establishment, the trustor and trustee which shall provide that the trustee shall hold the money or securities in trust for the purposes for which deposited and that the trustee, upon the signature of a majority of such trustees, shall deliver the corpus of the trust to the funeral establishment upon the filing of a certified copy of the death certificate or other satisfactory evidence of the death of the beneficiary, together with satisfactory evidence that the funeral establishment has furnished the merchandise and services, provided,

however, that (1) in the case of a trust agreement between any of the trustees set forth in Section 7736 and a recipient of public assistance, under the provisions of subdivision (a) of Section 11158 or paragraph (1) of subdivision (e) of Section 12152 of the Welfare and Institutions Code, and provided the value limitations of those sections are not exceeded, such trust agreement may further provide that it is irrevocable, and (2) in all other cases such trust agreement shall further provide that at any time before the funeral establishment has furnished the merchandise and services provided for in the contract the trustor or the legally appointed representative may in writing demand and receive the return of the corpus of the trust, together with any income accrued in the trust, less the revocation fee provided for in Section 7735; provided, however, that if and when the trustor becomes otherwise eligible, or in order to become eligible, for public social services, as provided in Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, he or she may agree, at his or her option, that the trust shall be irrevocable in order to avail himself or herself of the provisions of Section 11158 or Section 12152 of the Welfare and Institutions Code. The delivery of the corpus of the trust and the accumulated income to the funeral establishment performing the services, trustor or beneficiary pursuant to the terms of this article and the trust agreement herein referred to, shall relieve the trustee of any further liabilities with regard to those funds or income therefrom.

SEC. 43. Section 7737.3 of the Business and Professions Code is amended to read:

7737.3. All commingled preneed trust funds held by a funeral establishment shall be subject to an annual, independent certified financial audit with a copy of the audit to be submitted to the board for review within 120 days of the close of the fund's fiscal year. Any findings of noncompliance with existing law regarding preneed trust funds shall be identified by the auditor in a separate report for review and action by the board. Audits and reports of noncompliance shall be filed simultaneously.

SEC. 44. Section 7738 of the Business and Professions Code is amended to read:

7738. A licensed funeral establishment that is also a licensed cemetery authority shall not deposit any money or securities received in connection with preneed funeral arrangements in a special endowment care fund as provided in Article 4 (commencing with Section 8775) of Chapter 5 of Part 3 of Division 8 of the Health and Safety Code, nor shall a licensed funeral establishment permit the deposit of any money or securities received in connection with a special endowment care fund into a preneed funeral trust fund. Nothing in this section shall require the liquidation or conversion of any lawful investment existing on December 31, 1981.

SEC. 45. Section 7739 of the Business and Professions Code is amended to read:

7739. Any person willfully violating the provisions of this article or any of them shall be punishable either by imprisonment in the county jail for a period not exceeding six months, or by fine not exceeding five hundred dollars ($500), or by both imprisonment and fine, or by imprisonment in the state prison for 16 months, or two or three years. If the violator is a funeral establishment licensee, he or she shall also be subject to disciplinary action as provided in Article 6 (commencing with Section 7686).

SEC. 46. Section 7740.5 of the Business and Professions Code is amended to read:

7740.5. A funeral establishment shall pay to the board the fee fixed by this chapter for filing with the board any report on preneed trust funds required by rules and regulations of the board adopted pursuant to Section 7740.

SEC. 47. Section 7745 of the Business and Professions Code is amended to read:

7745. Every funeral establishment shall present to the survivor of the deceased who is handling the funeral arrangements or the responsible party a copy of any preneed agreement which has been signed and paid for in full, or in part by, or on behalf of the deceased and is in the possession of the funeral establishment. The copy may be presented in person, by certified mail, or by facsimile transmission, as agreed upon by the survivor of the deceased or the responsible party. A funeral establishment that knowingly fails to present a preneed agreement to the survivor of the deceased or the responsible party shall be liable for a civil fine equal to three times the cost of the preneed agreement, or one thousand dollars ($1,000), whichever is greater.

SEC. 48.

SEC. 49. The powers and duties of the Funeral Directors and Embalmers Board, as described in the act enacting this section, shall be subject to Section 102.1 of the Business and Professions Code.

SEC. 50. 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 1152

An act to amend Section 11011.5 of, and to add Section 14669.35 to, the Government Code, relating to state property.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 11011.5 of the Government Code is amended to read:

11011.5. When no state or other public entity seeks to obtain title to specific surplus state-owned real property, a state agency authorized to sell that property, except property acquired for state highway purposes, may, with the approval of the Department of General Services, employ a licensed real estate broker for a negotiated commission not to exceed reasonable and customary brokerage commissions applicable to similar privately owned properties in the area in connection with that sale and pay the amount of commission earned by the broker. The commission shall be paid only out of the proceeds of the sale before the proceeds are remitted to the State Treasury. The Director of General Services shall only employ the services of a broker when the director determines that the employment of a broker to sell the property would result in a cost savings to the state. Any state properties sold through the services of a broker shall be reported, along with a comparison of the estimated cost savings obtained through the use of a broker, in the annual surplus property report to the Legislature required pursuant to Section 11011.

SEC. 2. Section 14669.35 is added to the Government Code, to read:

14669.35. (a) The Director of General Services may purchase, exchange, or otherwise acquire real property and construct facilities, including any improvements, betterments, and related facilities, in the County of Sacramento, along the Highway 50 corridor in close proximity or contiguous to the Phase I and II sites of the Franchise Tax Board facilities, and within a reasonable distance of an existing or planned light rail station, for the purpose of acquiring approximately 1,000,000 square feet of office and warehouse space for use by the Franchise Tax Board and other state agencies.

The acquisition of property shall be pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850)). In no event shall the Department of General Services pay more than fair market value for the sites. The award of construction contracts shall be to the lowest responsible bidder.

(b) The Department of General Services may contract for the design, construction, construction management, and other services

related to the design and construction of the office, warehouse, and parking facilities authorized to be acquired pursuant to subdivision (a). The Department of General Services shall prepare preliminary plans before entering into a construction contract for the project.

(c) (1) The State Public Works Board may issue revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to Chapter 5 (commencing with Section 15830) of Part 10b of Division 3 of Title 2 to finance the acquisition of land and facilities for the purposes of this section. The State Public Works Board and the Department of General Services may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313. In the event the bonds authorized by the project are not sold, the Franchise Tax Board shall commit a sufficient amount of its support appropriation to repay any loans made for the project from the Pooled Money Investment Account. It is the intent of the Legislature that this commitment shall be included in future Budget Acts until all outstanding loans from the Pooled Money Investment Account are repaid either through the proceeds from the sale of bonds or from an appropriation.

(2) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold may equal, but shall not exceed the cost of acquisition, including land, construction, preliminary plans and working drawings, construction management and supervision, other costs relating to the design and construction of the facilities, and any additional sums necessary to pay interim and permanent financing costs. The additional amount may include interest and a reasonable required reserve fund.

(3) Authorized costs of the facilities, including land acquisition, preliminary plans, working drawings, and construction shall not exceed two hundred eighteen million dollars ($218,000,000).

(4) Notwithstanding Section 13332.11, the State Public Works Board may authorize the augmentation of the amount authorized under this paragraph by up to, but not exceeding, 10 percent of the amount appropriated.

(5) 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 Director of General Services may execute and deliver a contract with the State Public Works Board for the lease of the facilities described in this section that are financed with the proceeds of the board's bonds, notes, or bond anticipation notes issued in accordance with this section.

(e) The Director of General Services shall, not later than 45 days prior to entering into any agreement to acquire facilities, as specified

in subdivision (a), notify the Chairperson of the Joint Legislative Budget Committee of the pending agreement, including the information specified in paragraph (5) of subdivision (c). It is the intent of the Legislature that the Joint Legislative Budget Committee hold a hearing on the pending agreement.

CHAPTER 1153

An act to amend Sections 69893.7, 70046.2, 70141.1, 73353, 73643, 73644, 73646, 73649, 73683, 73684, 73691, 73692, 73699.1, 73736, 73953, 73954, 74344, 74345, 74348, 74352, 74368, 74370, 74640, 74640.1, 74640.2, 74642, 74643, 74644, 74644.5, 74663, 74665, 74744, 74745, 74921.7, 74921.10, 74954, 74954.5, 74955, and 74956 of, and to add Sections 69912, 70141.13, 74644.3, and 74662.5 to, the Government Code, relating to courts.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 69893.7 of the Government Code is amended to read:

69893.7. Notwithstanding any other provision of law, the following provisions shall apply to the Yolo County superior and municipal courts.

(a) To assist the court in the performance of its duties and the exercise of the powers conferred by law upon the court, a majority of the judges of the superior and municipal courts, with the approval of the board of supervisors, may establish such job classifications and may appoint a clerk and such officers, assistants, and employees, including official court reporters, as necessary. A majority of the judges of the superior and municipal courts may delegate the creation of job classifications and the appointment of employees to the court executive officer. Official court reporters shall hold office at the pleasure of the appointing officer.

(b) The compensation, including salary, retirement, vacations, and other benefits, of all Yolo County superior and municipal court officers and employees may be adjusted by the board of supervisors. The board of supervisors may extend the management benefits package to officers, assistants, and employees of the superior and municipal courts, including judges, on the same basis as it is extended to other officers and employees of the county. Unless otherwise provided by law, employees of the superior and municipal courts are subject to the personnel regulations, memoranda of understanding and affirmative action plan of the county.

(c) In addition to the official court reporters, the presiding judge of the superior and municipal courts may appoint as many court reporters pro tempore as the business of the court requires, who shall hold office at his or her pleasure. The court reporters pro tempore shall be unsalaried, but shall be compensated at a rate to be established by joint action of the board of supervisors and a majority of the judges of the superior and municipal courts. In criminal cases, the compensation of the court reporters pro tempore shall, upon order of the court, be a charge against the general fund of the county. The presiding judge of the superior and municipal courts may delegate the appointment of court reporters pro tempore and the determination of their salary to the court executive officer.

SEC. 2. Section 69912 is added to the Government Code, to read:

69912. In the County of San Luis Obispo, upon authorization of a majority of the judges, the executive officer shall appoint a deputy clerk of the court or an assistant executive officer who shall assist in the performance of the duties of Sections 69893 and 69898.

The deputy clerk of court or assistant executive officer classification shall hold office at the pleasure of the court. The court shall fix the qualifications of the position. The position shall be exempt from civil service laws.

The salary of the position shall be established and adjusted by mutual agreement of a majority of judges and the board of supervisors.

Benefits other than salary shall be the same as are now provided or may hereafter be provided to equivalent county classifications. The position shall be included in the county retirement system.

SEC. 3. Section 70046.2 of the Government Code is amended to read:

70046.2. (a) In Fresno County, each reporter shall be paid an annual salary established according to the following salary schedule:

Step 1. $43,394
Step 2. $45,568
Step 3. $47,824
Step 4. $50,216

Reporters shall initially be placed at step 1 of the salary schedule except reporters may be placed at a higher step with the approval of the county administrative officer, and shall advance one step annually upon the anniversary date of the employment. If, because of recruitment difficulties, it is necessary to appoint a court reporter at a step of the salary schedule which is above the step at which any court reporters are currently employed, all court reporters below that step will move to the higher step at the discretion of the judges of the court.

(b) Each pro tempore reporter shall be paid one hundred sixty-six dollars and ninety cents ($166.90) for a full day on duty under order of the court. For purposes of receiving the above compensation, one or more of the following shall apply:

(1) The court has indicated in advance that the pro tempore assignment is for a full day.

(2) The pro tempore reporter, having accepted a full-day assignment, has not voluntarily relinquished his or her services at or before the end of four hours of service.

(3) The pro tempore reporter was on duty for more than four hours.

Each pro tempore reporter shall be paid one hundred eleven dollars and twenty-seven cents ($111.27) for one-half day of duty under order of the court when (a) the court has indicated in advance that the pro tempore assignment is for a half day and the pro tempore reporter is on duty for four hours or less, generally exclusive of the noon recess; or (b) the court has indicated in advance that the pro tempore assignment is for a full day but the pro tempore reporter is on duty for four hours or less and consents to being released for the balance of the day.

Where a pro tempore reporter has agreed to a one-half day assignment, the courts shall make every practicable effort to assure that the pro tempore reporter shall not be on duty for longer than four hours, unless the pro tempore reporter agrees with the court to work beyond four hours. In the latter case, the full-day pro tempore rate of one hundred sixty-six dollars and ninety cents ($166.90) shall apply.

Nothing herein shall be construed to limit the court's authority to in all instances pay a pro tempore reporter at the rate of one hundred sixty-six dollars and ninety cents ($166.90) when, in the court's judgment, said rate is necessary to obtain pro tempore reporter services for the court.

(c) In addition to the salary herein provided, each regularly employed reporter shall accrue and be entitled to receive sick leave benefits at the rate of 3.6924 hours of sick leave with pay for each pay period or major fraction thereof, served up to an accumulative total of 156 working days. Each such reporter shall accrue and receive vacation at the same rate as judges of such court not to exceed 21 working days a year which may be accrued not to exceed 42 days to be taken at such time as the judge to which he or she has been assigned consents.

SEC. 3.5. Section 70141.1 of the Government Code is amended to read:

70141.1. (a) In El Dorado County, a majority of the judges of the superior court, may appoint one or more commissioners up to one full-time equivalent, subject to the availability of funding. The superior court may provide that the commissioner, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties of a probate commissioner appointed pursuant to Section 69897 or any other duties authorized by law for a commissioner to perform. The superior court may also authorize the commissioner to perform the duties of a juvenile court referee

appointed pursuant to Section 247 of the Welfare and Institutions Code.

(b) Any commissioner appointed pursuant to this section shall receive compensation equivalent to 70 to 91 percent of a superior court judge's salary.

The salary shall be adjusted by the county at the time and in the manner specified in Section 68203. The court shall determine the level of salary to be received by a court commissioner, making adjustments in accordance with qualifications, performance, and other factors deemed relevant by the court. The commissioner position shall be included in the El Dorado County personnel allocation. The commissioner shall be a member of the Public Employee's Retirement system and shall receive vacation, sick leave, management leave and fringe benefits identical to unrepresented management employee classifications in El Dorado County.

(c) The presiding judge of the superior court shall specify the days, hours, and court locations for the commissioner. Each commissioner shall also be allowed actual traveling expenses pursuant to Section 70148.

(d) Any commissioner appointed pursuant to this section shall have been admitted to practice law in California for not less than five years, shall hold office at the pleasure of the superior court, and shall not engage in the private practice of law.

SEC. 3.7. Section 70141.13 is added to the Government Code, to read:

70141.13. (a) In Santa Cruz County, the superior court may provide that the commissioner, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties of a juvenile court referee appointed pursuant to Section 247 of the Welfare and Institutions Code, and other duties as specified by the superior court.

(b) Any commissioner appointed pursuant to this section shall have been admitted to practice law in California for not less than five years, shall hold office at the pleasure of the court, and shall not engage in the private practice of law.

SEC. 4. Section 73353 of the Government Code is amended to read:

73353. The classes of positions provided in Section 73351 are allocated to the salary schedule as follows:

Class Title	Salary Schedule	Pay Level
Deputy Clerk-Beginning Level	C5-1270	1618-1966
Deputy Clerk-Experienced Level	C5-1414	1868-2270
Deputy Clerk-Senior Level	XB-1572	2085-2663
Deputy Clerk-Specialist Level	XC-1686	2334-2982
Deputy Clerk-DEO I	C5-1337	1730-2102

Deputy Clerk-DEO II	C5-1434	1906-2316
Deputy Clerk-Courtroom Clerk	C5-1836	2848-3462
Court Operations Coordinator II	C5-2103	3719-4521
Court Operations Coordinator I	C5-2006	3375-4103
District Court Manager III	C1-2432	6281F
District Court Manager II	C5-2322	4629-5627
District Court Manager I	C5-2194	4073-4951
Court Probation Officer	C5-1947	3182-3868
Municipal Court Collection Agent	C5-1697	2479-3013
Municipal Court Computer Systems Technician	C5-1752	2619-3183
Municipal Court Accounting Specialist	XB-1766	2549-3256
Municipal Court Division Supervisor	C5-1861	2920-3549
Municipal Court Program Assistant	C5-1867	2938-3571
Municipal Court Operations and Training Manager	C5-2053	3538-4300
Municipal Court Management Analyst	C5-2127	3809-4630
Municipal Court Systems and Facilities Manager	C5-2196	4081-4961
Municipal Court Fiscal and Administrative Manager	C5-2219	4176-5076
County Municipal Court Administrator	C5-2593	6069-7377

SEC. 5. Section 73643 of the Government Code is amended to read:

73643. There shall be one court administrator who shall serve as clerk of the court, and who shall be appointed by the majority of the judges of the court. The biweekly salary of the court administrator shall be within the biweekly rate range ES-15 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "a majority of the judges."

SEC. 5.5. Section 73644 of the Government Code is amended to read:

73644. The court administrator may appoint the following personnel:

(a) One assistant court administrator. The assistant court administrator shall serve as the assistant clerk of the court and shall receive a biweekly salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San

Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator." A person shall not be appointed to the class of assistant court administrator if any of the three deputy court administrator positions are filled.

(b) Three deputy court administrators, who shall serve at the pleasure of the court administrator. The deputy court administrators shall receive a salary within the biweekly range ES-6 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall mean "the court administrator." The deputy court administrator positions shall be filled only upon the equivalent number of corresponding permanent vacancies in the positions denoted in subdivision (c), (d), or (e).

(c) One deputy clerk-administrative assistant I, II, or III or deputy clerk-administrative services manager I or II as the case may be. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego. A deputy clerk-administrative services manager I shall receive a biweekly salary at a rate equal to that specified for administrative services manager I in the classified service of the County of San Diego. A deputy clerk-administrative services manager II shall receive a biweekly salary at a rate equal to that specified for administrative services manager II in the classified service of the County of San Diego.

(d) Three deputy clerk-division managers III each of whom shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II of the San Diego Judicial District.

(e) Three deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10

percent higher than that specified for deputy clerk V of the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V of the San Diego Judicial District.

(f) Sixteen deputy clerks IV. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. One deputy clerk IV who is assigned to the presiding judge in the master calendar department shall receive a biweekly salary at a rate of 5 percent higher than that specified for the deputy clerk IV. This increased biweekly rate shall apply only during the period of this assignment and shall not apply to paid time off or to terminal payoff.

(g) Seventy-three deputy clerks III, II, or I, deputy clerk-intermediate clerk typists, or deputy clerk-junior clerk typists, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to deputy clerk I may be at any step within the salary range. Up to four of these positions may be filled at the level of deputy clerk-intermediate clerk typist, or deputy clerk-junior clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. A deputy clerk-junior clerk typist shall receive a biweekly salary at a rate equal to that specified for junior clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of seven deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

(h) Three deputy clerk-data entry operators. No more than two of the deputy clerk-data entry operator positions may be filled at the deputy clerk-senior data entry operator level. Each of the deputy clerk-data entry operators shall receive a biweekly salary at a rate equal to that specified for data entry operator in the classified service

of the County of San Diego. Each of the deputy clerk-senior data entry operators shall receive a biweekly salary at a rate equal to that specified for senior data entry operator in the classified service of the County of San Diego.

(i) One deputy clerk-municipal court secretary who shall receive a biweekly salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range.

(j) Three deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(k) One deputy clerk-research attorney I, deputy clerk-research attorney II, or deputy clerk-law clerk, as the case may be. A deputy clerk-research attorney I shall receive a biweekly salary equal to that specified for a deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney II shall receive a biweekly salary equal to that specified for a deputy county counsel II in the classified service of the County of San Diego. A deputy clerk-law clerk shall receive a biweekly salary at a rate equal to that specified for a law clerk in the classified service of the County of San Diego.

(*l*) One deputy clerk-research attorney III who shall receive a biweekly salary equal to that specified for a deputy county counsel III in the classified service of the County of San Diego.

(m) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for an administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for an administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for an administrative secretary I in the classified service of the County of San Diego.

(n) One deputy clerk, associate, senior accountant, or accounting manager as the case may be. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for the class of associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for the class of senior accountant in the classified service of the County of San Diego.

A deputy clerk-accounting manager shall receive a biweekly salary at a rate equal to that specified for the class of deputy clerk-division manager III.

(o) Three deputy clerk-substance abuse assessors I or II, as the case may be. Notwithstanding subdivision (b) of Section 73649, persons appointed to these positions on or after January 1, 1990, shall serve at the pleasure of the court administrator. A deputy clerk-substance abuse assessor II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of San Diego County. A deputy clerk-substance abuse assessor I shall receive a biweekly salary at a rate 9 percent below that specified for a deputy clerk-substance abuse assessor II. Appointments to deputy clerk-substance abuse assessor I and II may be at any step within the salary range.

(p) Notwithstanding subdivision (b) of Section 73649, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(q) Notwithstanding subdivision (b) of Section 73649, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73640 to 73650, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of these classes, the county personnel director shall conduct a classification review and make recommendations to the court administrator as to the establishment of these classes. The rate of pay for each individual employed in this class of deputy clerk-court worker shall be within the range proposed for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months in duration. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of these positions may be established by joint action of a majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the

joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of a majority of the judges and the board of supervisors.

(r) Notwithstanding subdivision (b) of Section 73649, the court administrator may appoint up to 20 temporary extra help deputy clerk-municipal court trainees I, II, III, or V, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee V shall receive an hourly salary at a rate equal to that specified for student worker V in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(s) Six deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for a deputy clerk IV. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(t) Three deputy clerk-municipal court computer specialists I, II, or III, as the case may be. A deputy clerk-municipal court computer specialist I, II, or III shall receive a biweekly salary at a rate equal to that specified for departmental computer specialist I, II, or III, respectively, in the classified service of the County of San Diego.

(u) One deputy clerk-senior systems analyst, associate systems analyst, assistant systems analyst, systems analyst trainee, or systems support analyst II, I, or trainee, as the case may be. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified

service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego. A deputy clerk-systems support analyst II shall receive a biweekly salary at a rate equal to that specified for a systems support analyst II in the classified service of the County of San Diego. A deputy clerk-systems support analyst I shall receive a biweekly salary at a rate equal to that specified for a systems support analyst I in the classified service of the County of San Diego. A deputy clerk-systems support analyst trainee shall receive a salary equal to that specified for a systems support analyst trainee in the classified service of the County of San Diego.

(v) One deputy clerk-staff development specialist or deputy clerk-staff development coordinator as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

(w) Eight deputy clerks V, each of whom shall receive a biweekly salary equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities.

(x) One deputy clerk-legal assistant I or II, as the case may be. A deputy clerk-legal assistant I shall receive a biweekly salary at a rate equal to that specified for legal assistant I in the classified service of the County of San Diego. A deputy clerk-legal assistant II shall receive a biweekly salary at a rate equal to that specified for legal assistant II in the classified service of the County of San Diego.

(y) Four deputy clerk-collection officers I, II, or III as the case may be. A deputy clerk-collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego. A deputy clerk-collection officer II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the classified service of the County of San Diego.

A deputy clerk-collection officer III shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer III in the classified service of the County of San Diego. Only one position can be filled at the deputy clerk court collection officer III level.

(z) Except as provided in this section, Section 74345 shall apply to the attachés appointed pursuant to this section and Section 73643.

(aa) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (ab), inclusive, and under Sections 73646 and 73649.1 may be increased by up to 30 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to those positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution is adopted, unless earlier ratified by the Legislature.

(ab) One deputy clerk-small claims advisor or deputy clerk-small claims counsel, as the case may be. The deputy clerk-small claims advisor shall receive a biweekly salary at a rate of 18.63 percent less than that specified for small claims counsel in the classified service of the County of San Diego. The deputy clerk-small claims counsel shall receive a biweekly salary at a rate equal to that specified for small claims counsel in the classified service of the County of San Diego.

SEC. 6. Section 73646 of the Government Code is amended to read:

73646. The court administrator may appoint three judicial secretaries, one of whom may be a supervising judicial secretary, who shall serve at the pleasure of the court administrator. Each judicial secretary shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego. Appointments to judicial secretary may be at any step within the salary range.

The position of judicial secretary shall be deemed comparable to the position of administrative secretary IV in the classified service of San Diego County. Whenever the salary of the class of administrative secretary IV is adjusted by the Board of Supervisors of San Diego County, the salary of the class of judicial secretaries shall be adjusted a commensurate percentage in the salary schedule on the same date.

The supervising judicial secretary shall receive a biweekly salary at a rate equal to that specified for the classification of confidential legal secretary III in the classified service of the County of San Diego. Appointments to supervising judicial secretary may be at any step within the salary range. The position of supervising judicial secretary shall be deemed comparable to the position of confidential legal secretary III in the classified service of San Diego County. Whenever the salary of the class of confidential legal secretary III is adjusted by

the Board of Supervisors of San Diego County, the salary of the class of supervising judicial secretary shall be adjusted a commensurate percentage in the salary schedule on the same date.

Notwithstanding Section 73649, the classifications of judicial secretary and supervising judicial secretary, respectively, shall receive and be entitled to the same number of holidays, leaves of absence, percentage of retirement offsets, and all other fringe benefits as are now or may hereafter be provided for the classifications of administrative secretary IV and confidential legal secretary III, respectively, in the classified service of the County of San Diego. However, the classifications of judicial secretary and supervising judicial secretary shall be entitled to: (a) earn sick leave credit at the rate of 5.385 percent of each hour of paid service during the pay period; (b) earn vacation credit at the rate of 5.769 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 25 working days where the employee has less than 10 years of continuous service; and (c) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 35 working days where the employee has 10 years or more of continuous service. Notwithstanding the sick leave and vacation credits indicated above, persons appointed to the positions of judicial secretary and supervising judicial secretary on or after January 1, 1993, shall be entitled to earn and accrue the same sick leave credit and vacation credit as an administrative secretary IV and confidential legal secretary III, respectively, in the classified service of the County of San Diego.

SEC. 7. Section 73649 of the Government Code is amended to read:

73649. (a) In addition to the salary provided in this article, the classes of attachés of the municipal court shall receive, and they shall be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the employees of the County of San Diego in the comparable classes specified in Section 74345. The court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the class of chief probation officer of the County of San Diego. The assistant court administrator and deputy court administrators shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the class of assistant chief probation officer of the County of San Diego. All persons employed as deputy clerk-division manager I, deputy clerk-division manager II, deputy clerk-division manager III, or deputy clerk-administrative assistant III shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the class of administrative assistant III in the classified service of the County of San Diego. However, all officers, employees,

and attachés of the municipal court shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego. The purpose and intent of this subdivision is to provide all court attachés except judicial secretaries employed, traffic trial commissioners, and court reporters with any and all, but no more than, those fringe benefits which are available to their comparable classes in the service of the County of San Diego as specified in this section or in Section 74345. Whenever action or approval by the chief administrative officer or county personnel director is required for the county benefit, it shall be taken or given, as to municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges of the municipal court or their designees, or, as to those serving at the pleasure of the court, by the majority of the judges of the municipal court or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The majority of all the municipal court judges may adopt rules for the conduct of and personnel privileges to be afforded the attachés of the court, excluding fringe benefits.

(b) All attachés other than court reporters, judicial secretaries, traffic trial commissioners, and other persons serving at the pleasure of their appointing authorities, may be appointed, promoted, removed, suspended, laid off, or discharged for cause by the appointing authority subject in such appointment, promotion, removal, suspension, layoff, or discharge to civil service provisions applicable to the classified personnel of the County of San Diego. Whenever these attachés are appointed or promoted to a position, they shall serve a probationary period of at least six months, and not to exceed 18 months, as specified in the job announcement for the class prior to appointment. If the San Diego County Charter is amended to repeal the Civil Service Rules and the board of supervisors adopts new Personnel Rules, the reference to civil service provisions in this subdivision shall mean the personnel rule provisions.

SEC. 8. Section 73683 of the Government Code is amended to read:

73683. (a) The clerk may appoint the following court personnel who shall receive a salary at the range indicated in the Fresno County Salary Resolution:

(1) One Administrative Services Assistant at salary within Band "H."

(2) One Administrative Secretary-Confidential at salary range 1019.

(3) Three Senior Court Clerks at salary range 1142.

(4) Nineteen Court Clerks II at salary range 1000.

(5) Nineteen Court Clerks I at salary range 893.

(6) Five Supervising Legal Process Clerks at salary range 1280.

(7) Five Senior Legal Process Clerks at salary range 1142.
(8) Eleven Legal Process Clerks II at salary range 1000.
(9) Eleven Legal Process Clerks I at salary range 893.
(10) Thirty-eight Office Assistants III at salary range 692.
(11) Thirty-eight Office Assistants II at salary range 623.
(12) Thirty-eight Office Assistants I at salary range 512.
(13) One Court Interpreting Services Coordinator at salary range 1134.
(14) One Senior Court Interpreter at salary range 1030.
(15) Four Court Interpreters at salary range 937.
(16) One Secretary to the Municipal Courts III at salary range 873.
(17) One Secretary to the Municipal Courts II at salary range 752.
(18) One Secretary to the Municipal Courts I at salary range 683.
(19) Four Municipal Court Division Managers at salary within Band "G."
(20) One Research Attorney III at salary range 1918.
(21) One Research Attorney II at salary range 1594.
(22) One Research Attorney I at salary range 1245.
(23) Two Systems and Procedures Analysts III at salary range 1488.
(24) Two Systems and Procedures Analysts II at salary range 1284.
(25) Two Systems and Procedures Analysts I at salary range 1038.

(b) Salary ranges indicated in paragraphs (1) to (25), inclusive, of subdivision (a) are effective December 18, 1995.

(c) The clerk may appoint any combination of court clerks, legal process clerks, and office assistants described in paragraphs (3) to (12), inclusive, of subdivision (a) not to exceed a total of 74; may appoint any combination of secretaries described in paragraphs (16) to (18), inclusive, of subdivision (a) not to exceed a total of one; may appoint any combination of research attorneys described in paragraphs (20) to (22), inclusive, of subdivision (a) not to exceed a total of one; and may appoint any combination of systems and procedures analysts described in paragraphs (23) to (25), inclusive, of subdivision (a) not to exceed a total of two.

(d) The clerk may appoint the following court personnel in the Clovis Branch who shall receive a salary at the range indicated in the Fresno County Salary Resolution:
(1) One Court Clerk II at salary range 1000.
(2) One Court Clerk I at salary range 893.
(3) One Supervising Legal Process Clerk at salary range 1280.
(4) Five Legal Process Clerks II at salary range 1000.
(5) Five Legal Process Clerks I at salary range 893.
(6) Five Office Assistants III at salary range 692.
(7) Five Office Assistants II at salary range 623.
(8) Five Office Assistants I at salary range 512.

(e) Salary ranges indicated in paragraphs (1) to (8), inclusive, of subdivision (d) are effective December 18, 1995.

The clerk may appoint any combination of Court Clerks described in paragraphs (1) and (2) of subdivision (d) not to exceed a total of one, and may appoint any combination of the specified number of personnel in each of paragraphs (4) to (8), inclusive, of subdivision (d) not to exceed a total of five.

SEC. 9. Section 73684 of the Government Code is amended to read:

73684. The biweekly salaries of the following classes of positions shall be in accordance with the following schedule:

Position	Range	1	2	3	4	5
Municipal Court Administrator	Band C	68825	–	–	–	99005
Municipal Court Division Manager	Band G	32606	–	–	–	52149
Administrative Services Assistant	Band H	24148	–	–	–	42722
Administrative Secretary-Confidential	1019	1019	1070	1124	1180	1239
Systems and Procedures Analyst III	1488	1488	1562	1640	1722	1808
Systems and Procedures Analyst II	1284	1284	1384	1415	1486	1560
Systems and Procedures Analyst I	1038	1038	1090	1145	1202	1262
Research Attorney III	1918	1918	2014	2115	2221	2332
Research Attorney II	1594	1594	1674	1758	1846	1938
Research Attorney I	1245	1245	1307	1372	1441	1513
Court Interpreting Services Coordinator	1134	1134	1191	1251	1314	1380
Senior Court Interpreter	1030	1030	1082	1136	1193	1253
Court Interpreter	937	937	984	1033	1085	1139
Secretary to the Municipal Courts III	873	873	917	963	1011	1062
Secretary to the Municipal Courts II	752	752	790	830	872	916
Secretary to the Municipal Courts I	683	683	717	753	791	831
Senior Court Clerk	1142	1142	1199	1259	1322	1388
Court Clerk II	1000	1000	1050	1103	1158	1216
Court Clerk I	893	893	938	985	1034	1086
Supervising Legal Process Clerk	1280	1280	1344	1411	1482	1556
Senior Legal Process Clerk	1142	1142	1199	1259	1322	1388
Legal Process Clerk II	1000	1000	1050	1103	1158	1216
Legal Process Clerk I	893	893	938	985	1034	1086
Office Assistant III	692	692	727	763	801	841
Office Assistant II	623	623	654	687	721	757
Office Assistant I	512	512	538	565	593	623

Except as specifically provided in this article to the contrary, all benefits, privileges and other provisions affecting the employment of county employees shall apply to all officers and attachés of the municipal court.

SEC. 10. Section 73691 of the Government Code is amended to read:

73691. A majority of the judges may appoint 11 full-time court reporters to serve at the pleasure of the judges and to be paid an annual salary established according to the following salary schedule:

Step 1. $43,394
Step 2. $45,568
Step 3. $47,824
Step 4. $50,216

Reporters shall initially be placed at step 1 of the salary schedule except reporters may be placed at a higher step with the approval of the county administrative officer, and shall be advanced one step annually upon the anniversary date of that employment. If, because of recruitment difficulties, it is necessary to appoint a court reporter at a step of the salary schedule which is above the step at which any court reporters are currently employed, all court reporters below that step will move to the higher step at the discretion of the judges of the court. Each such reporter shall accrue and be entitled to receive sick leave benefits at the rate of 3.6924 hours of sick leave with pay for each pay period or major fraction thereof, served up to an accumulative total of 156 working days. Each such reporter shall accrue and receive vacation at the same rate as judges of that court not to exceed 21 working days a year which may be accrued not to exceed 42 days to be taken at such time as the judge to which he or she has been assigned consents.

SEC. 11. Section 73692 of the Government Code is amended to read:

73692. Pursuant to Section 72194, the judges of the court may appoint as many additional reporters as the business of the court requires, who shall be known as official reporters pro tempore. They shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in the section for reporting testimony and proceedings the official reporters pro tempore shall be paid in accord with the following:

Each pro tempore reporter shall be paid one hundred sixty-six dollars and ninety cents ($166.90) for a full day on duty under order of the court. For purposes of receiving the above compensation, one or more of the following shall apply:

(a) The court has indicated in advance that the pro tempore assignment is for a full day.

(b) The pro tempore reporter was on duty for more than four hours.

Each pro tempore reporter shall be paid one hundred eleven dollars and twenty-seven cents ($111.27) for one-half day of duty under order of the court when (a) the court has indicated in advance that the pro tempore assignment is for a half day and the pro tempore reporter is on duty for four hours or less, generally exclusive of the noon recess; or (b) the court has indicated in advance that the pro tempore assignment is for a full day but the pro tempore reporter is on duty for four hours or less and consents to being released for the balance of the day.

Where a pro tempore reporter has agreed to a one-half day assignment, the courts shall make every practicable effort to assure that the pro tempore reporter shall not be on duty for longer than four hours, unless the pro tempore reporter agrees with the court to work beyond four hours. In the latter case, the full-day pro tempore rate of one hundred sixty-six dollars and ninety cents ($166.90) shall apply.

Nothing herein shall be construed to limit the court's authority to in all instances pay a pro tempore reporter at the rate of one hundred sixty-six dollars and ninety cents ($166.90) when, in the court's judgment, that rate is necessary to obtain pro tempore reporter services for the court.

The above payments shall upon order of the court be a charge against the general fund of the county.

SEC. 12. Section 73699.1 of the Government Code is amended to read:

73699.1. (a) The court administrator may, in consultation with the judges of the court, appoint the following court personnel who shall be compensated pursuant to Sections 73684, 73685, 73686, and 73687:

(1) Eighteen office assistants I, II, or III, who shall receive a salary specified in range 512, 623, or 692, respectively.

(2) Thirty-four legal process clerks I or II, who shall receive a salary specified in range 893 or 1000, respectively.

(3) Eight supervising legal process clerks, who shall receive a salary specified in range 1280.

(b) The court administrator may appoint any combination of legal process clerks and office assistants, not to exceed a total of 49. Whenever the business of the court or other emergency requires a greater number of employees or a reclassification of employees in order to effectively carry out the duties and functions of the court, the court administrator may, with the approval of the board of supervisors, establish new positions or reclassify existing positions and appoint such additional employees as may be necessary, each appointment to remain in effect only until January 1 of the second fiscal year following the fiscal year in which the appointment was made, unless subsequently ratified by the Legislature. The order establishing such positions shall designate the position, title, and salary range.

(c) Whenever reference is made to a numbered salary range or lettered salary band in any section of this article, the schedule of hours, rates of pay, and approximate monthly equivalents found in the Fresno County Salary Resolution in effect on the effective date of this article shall apply.

(d) If the board of supervisors adopts a revised salary resolution for county employees or applies new salary range numbers for the purpose of salary adjustment, the new salary rates shall apply equally to the positions named in this article. Any salary adjustment made pursuant to this section shall be effective on the same date as the action applicable to other county permanent classified employees, but shall remain in effect only until January 1 of the second fiscal year following the fiscal year in which such adjustment in salary is made, unless subsequently ratified by the Legislature.

(e) Any officer or attaché of the court who receives a promotion to a position having an overlapping salary range shall be placed upon the step of the new salary range as provided by the Fresno County Salary Resolution.

SEC. 13. Section 73736 of the Government Code is amended to read:

73736. The clerk-administrator may appoint:

(a) One chief deputy municipal court clerk-administrator who shall receive a monthly salary at a rate specified in range 272.

(b) Four municipal court clerks III, each of whom shall receive a monthly salary at a rate specified in range 170.

(c) Ten municipal court clerks II, each of whom shall receive a monthly salary at a rate specified in range 155.

(d) Six municipal court clerks I, each of whom shall receive a monthly salary at a rate specified in range 137.

(e) One court reporter, who shall receive a monthly salary rate specified in range 282.

(f) Two interpreters, each of whom shall receive a monthly salary at a rate specified in range 179.

(g) One accounting supervisor, who shall receive a monthly salary at a rate specified in range 202.

(h) Six municipal court clerk supervisors, each of whom shall receive a monthly salary at a rate specified in range 197.

(i) One account clerk III, who shall receive a monthly salary at a rate specified in range 151.

(j) One account clerk II, who shall receive a monthly salary at a rate specified in range 133.

(k) One legal office assistant II, who shall receive a monthly salary at a rate specified in range 165.

(*l*) One court computer coordinator, who shall receive a monthly salary at a rate specified in range 239.

SEC. 14. Section 73953 of the Government Code is amended to read:

73953. There shall be one court administrator who shall serve as clerk of the court, who shall be appointed by, and serve at the pleasure of the majority of the judges of the court. The biweekly salary of the court administrator shall be within the biweekly rate range ES-15 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "a majority of the judges."

SEC. 15. Section 73954 of the Government Code is amended to read:

73954. The court administrator may appoint:

(a) One assistant court administrator at the direction of a majority of the judges of the court who shall serve at the pleasure of the majority of the judges. The biweekly salary of the assistant court administrator shall be within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary and any advancement or reduction within the range shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator." A person shall not be appointed to the class of assistant court administrator if all three deputy court administrator positions are filled.

(b) Three deputy court administrators, who shall serve at the pleasure of the court administrator. The deputy court administrators shall receive a salary within the biweekly range ES-6 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with Article 3.5 of the Compensation Ordinance of the County of San Diego and subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall mean "the court administrator." The deputy court administrator positions shall be filled only upon the equivalent number of corresponding vacancies in the positions denoted in subdivision (c), (d), or (*l*).

(c) Two deputy clerk-division managers III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division managers II.

(d) Four deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V of the San Diego Judicial District.

(e) Ten deputy clerks V, who shall receive a salary at a rate equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities.

(f) Twenty-five deputy clerks IV, or senior deputy clerks, as the case may be. Each deputy clerk IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed three positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate 5 percent higher than that specified for a deputy clerk IV. The duties of the class of senior deputy clerk shall be those of a courtroom clerk and shall include supervisory responsibilities. One deputy clerk IV who is assigned to the presiding judge in the master calendar department may receive a biweekly salary at a rate of 5 percent higher than that specified for the deputy clerk IV. This increased biweekly rate shall apply only during the period of this assignment and shall not apply to paid time off or to terminal payoff.

(g) One hundred deputy clerks III, II, or I, or deputy clerk-intermediate clerk typists as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I class may be at any step within the salary range. Up to four of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of eight deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the

supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

(h) One deputy clerk-municipal court secretary. A deputy clerk-municipal court secretary shall receive a biweekly salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. Appointments to the class of deputy-clerk municipal court secretary may be at any step within the salary range at the discretion of the court administrator.

(i) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(j) Five deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(k) One deputy clerk-interpreter coordinator, or deputy clerk-interpreter supervisor, as the case may be. A deputy clerk-interpreter coordinator shall receive a biweekly salary at a rate equal to that specified for deputy clerk V. A deputy clerk-interpreter supervisor shall receive a biweekly salary at a rate equal to that specified for deputy clerk IV. Appointments to deputy clerk interpreter-coordinator or deputy clerk-interpreter supervisor may be at any step within the salary range at the discretion of the court administrator.

(*l*) One deputy clerk-administrative assistant I, II, or III, or deputy clerk-administrative services manager I or II, as the case may be. The deputy clerk-administrative assistant I, II, or III shall receive a biweekly salary at a rate equal to that specified for administrative assistant I, II, or III, respectively, in the classified service of the County of San Diego. The deputy clerk-administrative services manager I shall receive a biweekly salary at a rate equal to that specified for administrative services manager I in the classified service of the County of San Diego. The deputy clerk-administrative services manager II shall receive a biweekly salary at a rate equal to that specified for administrative services manager II in the classified service of the County of San Diego.

(m) Five deputy administrative clerks III, II, or I, as the case may be. Each deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for a deputy clerk IV. Each deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. Each deputy

administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(n) One deputy clerk associate, senior, or deputy clerk-accounting manager, as the case may be. A deputy clerk-accounting manager shall receive a biweekly salary equal to that of a deputy clerk-division manager III. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service in the County of San Diego. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego.

(o) One deputy clerk-assistant, or junior accountant, as the case may be. The deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for an assistant accountant in the classified service of the County of San Diego. The deputy clerk-junior accountant shall receive a biweekly salary at a rate equal to that specified for a junior accountant in the classified service of the County of San Diego.

(p) Two deputy clerk-research attorney I, deputy clerk-research attorney II, or deputy clerk-law clerk, as the case may be. Persons appointed to either of these positions on or after January 1, 1991, shall serve at the pleasure of the court administrator. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney II shall receive a biweekly salary at a rate equal to that specified for deputy county counsel II in the classified service of the County of San Diego. A deputy clerk-law clerk shall receive a biweekly salary at a rate equal to that specified for law clerk in the classified service of the County of San Diego.

(q) One deputy clerk-staff development specialist or deputy clerk-staff development coordinator as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

(r) One deputy clerk-senior systems analyst, associate systems analyst, assistant systems analyst, or systems analyst trainee as the case may be. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified

service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(s) One deputy clerk-systems support analyst II or I as the case may be. A deputy clerk-systems support analyst II shall receive a biweekly salary at a rate equal to that specified for systems support analyst II in the classified service of the County of San Diego. A deputy clerk-systems support analyst I shall receive a biweekly salary at a rate equal to that specified for systems support analyst I in the classified service of the County of San Diego.

(t) Five deputy clerk-court referral officers I or deputy clerk-court referral officers II, as the case may be. Notwithstanding subdivision (b) of Section 73957, persons appointed to these positions shall serve at the pleasure of the court administrator. The deputy clerk-court referral officer II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of the County of San Diego. A deputy clerk-court referral officer I shall receive a biweekly salary at a rate of 9 percent below that specified for a deputy clerk-court referral officer II. Appointments to deputy clerk-court referral officer I and deputy clerk-court referral officer II may be at any step within the salary range.

(u) Two deputy clerk-municipal court computer specialist I, II, or III, as the case may be. A deputy clerk-municipal court computer specialist I, II, or III shall receive a biweekly salary at a rate equal to that specified for departmental computer specialist I, II, or III, respectively, in the classified service of the County of San Diego.

(v) One deputy clerk-data entry supervisor. A deputy clerk-data entry supervisor shall receive a biweekly salary at a rate equal to that specified for data entry supervisor in the classified service of the County of San Diego.

(w) Nine deputy clerk-data entry operators, or deputy clerk-senior data entry operators, as the case may be. A deputy clerk-data entry operator shall receive a biweekly salary at the rate equal to that specified for data entry operator in the classified service of the County of San Diego.

A deputy clerk-senior data entry operator shall receive a biweekly salary at a rate equal to that specified for senior data entry operator in the classified service of the County of San Diego. No more than five of these positions may be filled at the deputy clerk-senior data entry operator level.

(x) Five deputy clerk-collection officers I, II, or III, as the case may be. Each deputy clerk-collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego. Each

deputy clerk-collection officers II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the classified service of the County of San Diego. Each deputy clerk-collection officer III shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer III in the classified service of the County of San Diego.

(y) One deputy clerk-small claims advisor or deputy clerk-small claims counsel, as the case may be. The deputy clerk-small claims advisor shall receive a biweekly salary at a rate equal to that specified for small claims advisor in the classified service of the County of San Diego. The deputy clerk-small claims counsel shall receive a biweekly salary at a rate equal to that specified for small claims counsel in the classified service of the County of San Diego.

(aa) Notwithstanding subdivision (b) of Section 73957, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(ab) Notwithstanding subdivision (b) of Section 73957, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73950 to 73960, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of these classes, the county personnel director shall conduct a classification review and make recommendations to the court administrator as to the establishment of these classes. The rate of pay for each individual employed in this class of deputy clerk-court worker shall be within the range proposed for the class pending establishment at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months in duration. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of these positions may be established by joint action of a majority of the judges and the board of supervisors in accordance with established county personnel and budgetary

procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of a majority of the judges and the board of supervisors.

(ac) Notwithstanding subdivision (b) of Section 73957, the court administrator may appoint up to 20 temporary extra help deputy clerk-municipal court trainees I, II, III, or V who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee V shall receive an hourly salary at a rate equal to that specified for student worker V in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(ad) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 73953.

(ae) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (y), inclusive, (aa), (ab), and (ac) and under Sections 73959, 73960, and 73960.1 may be increased by up to 20 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be

added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution is adopted, unless earlier ratified by the Legislature.

SEC. 16. Section 74344 of the Government Code is amended to read:

74344. The court administrator may appoint:

(a) One assistant court administrator, with the consent of a majority of the judges of the court, who shall be empowered to act in the place and stead of the court administrator in the event that the court administrator is absent or unavailable for any reason. Persons appointed to this position on or after January 1, 1991, shall serve at the pleasure of the court administrator. The assistant court administrator shall receive a biweekly salary within the biweekly rate range ES-12 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) Four deputy court administrators, with the consent of a majority of the judges of the court, one of whom shall be empowered to act in the place and stead of the assistant court administrator in the event that the assistant court administrator is absent or unavailable for any reason. Persons appointed to these positions on or after January 1, 1991, shall serve at the pleasure of the court administrator. A deputy court administrator shall receive a salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(c) Four deputy clerk-division managers III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II. Two of these positions may be designated as principal managers. When a position is designated principal manager, the incumbent shall receive a bonus of 10 percent.

(d) Six deputy clerk-division managers II or deputy clerk-division managers I as the case may be. A deputy clerk-division manager II

shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V. A deputy clerk-manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V.

(e) Thirteen deputy clerks V each of whom shall receive a biweekly salary at a rate 32.6 percent higher than that specified for deputy clerk III.

(f) One deputy clerk V or deputy clerk-division manager I may be designated as calendar coordinator by the court administrator and shall receive a bonus of 20.5 percent or 10.5 percent, respectively.

(g) Sixty-seven deputy clerk-senior deputy clerks or deputy clerks IV, as the case may be. A deputy clerk IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerks in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed 20 positions. A senior deputy clerk shall receive a biweekly salary at a rate 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities or special assignments.

(h) Two hundred fourteen deputy clerks III, II, or I, deputy clerk-intermediate clerk typists, or deputy clerk-junior typist as the case may be. Each deputy clerk III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each deputy clerk I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. Appointments to deputy clerk I may be at any step within the salary range at the discretion of the court administrator. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. A deputy clerk-junior clerk typist shall receive a biweekly salary at a rate equal to that specified for junior clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of 15 deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

(i) One deputy clerk-accounting manager or senior accountant, as the case may be. A deputy clerk-accounting manager shall receive a

biweekly salary at a rate equal to that specified for the class of deputy clerk-division manager III. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego.

(j) Eleven deputy clerk-court interpreters, each of whom shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(k) One deputy clerk-senior staff interpreter who shall receive a biweekly salary at a rate equal to that specified for deputy clerk V.

(*l*) One deputy clerk-municipal court secretary who shall receive a biweekly salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range.

(m) One deputy clerk-administrative secretary IV, III, II, or I, as the case may be. A deputy clerk-administrative secretary IV shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(n) One deputy clerk-administrative services manager II or I, as the case may be. A deputy clerk-administrative services manager II shall receive a biweekly salary at a rate equal to that specified for administrative services manager II in the classified service of the County of San Diego. A deputy clerk-administrative services manager I shall receive a biweekly salary at a rate equal to that specified for administrative services manager I in the classified service of the County of San Diego.

(o) One deputy clerk-principal administrative analyst who shall receive a biweekly salary at a rate equal to that specified for the class of principal administrative analyst in the classified service of the County of San Diego.

(p) Four deputy clerk-principal systems analysts, senior systems analysts, associate systems analysts, assistant systems analysts, or systems analyst trainees, as the case may be. A deputy clerk-principal systems analyst shall receive a biweekly salary at a rate equal to that specified for principal systems analyst in the classified service of the County of San Diego. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior

systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(q) Three deputy clerk-LAN systems supervisors or deputy clerk-LAN systems analysts III, II, or I, as the case may be. A deputy clerk-LAN systems supervisor shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems supervisor in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst III shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst III in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst II shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst II in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst I shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst I in the classified service of the County of San Diego.

(r) Two deputy clerk-research attorneys IV, or III, as the case may be. A deputy clerk-research attorney IV shall receive a biweekly salary at a rate equal to that specified for deputy county counsel IV in the classified service of the County of San Diego. A deputy clerk-research attorney III shall receive a biweekly salary at a rate equal to that specified for deputy county counsel III in the classified service of the County of San Diego. Notwithstanding subdivision (b) of Section 74348, persons appointed to these positions on or after January 1, 1991, shall serve at the pleasure of the court administrator.

(s) Four deputy clerk-research attorneys II or I, as the case may be. A deputy clerk-research attorney II shall receive a biweekly salary at a rate equal to that specified for deputy county counsel II in the classified service of the County of San Diego. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. Notwithstanding subdivision (b) of Section 74348, persons appointed to these positions on or after January 1, 1990, shall serve at the pleasure of the court administrator.

(t) Two deputy clerk-legal assistants II or I, as the case may be. A deputy clerk-legal assistant II shall receive a biweekly salary at a rate equal to that specified for legal assistant II in the classified service of the County of San Diego. A deputy clerk-legal assistant I shall receive a biweekly salary at a rate equal to that specified for legal assistant I in the classified service of the County of San Diego.

(u) Notwithstanding subdivision (b) of Section 74348, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Section 74345 pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of these classes, the county personnel director shall conduct a classification review and make recommendations to the court administrator as to the establishment of these classes. The rate of pay for each individual employed in this class of deputy clerk-court worker shall be within the designated range at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months in duration. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When an appointment is made, the class, compensation (including salary and fringe benefits), and number of these positions may be established by joint action of a majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that a person serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire no later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of a majority of the judges and the board of supervisors.

(v) Notwithstanding subdivision (b) of Section 74348, up to 10 extra help deputy clerk-junior clerk positions (hourly rate) at the junior clerk-typist level, may be appointed by and serve at the pleasure of the court administrator. These appointments shall be temporary for a period not to exceed six months, plus one additional period not to exceed six months, at the court administrator's option.

(w) Notwithstanding subdivision (b) of Section 74348, up to 22 extra help positions (hourly rate) may be appointed by and serve at the pleasure of the court administrator in the class and at the salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period not

to exceed six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(x) Notwithstanding subdivision (b) of Section 74348, the court administrator may appoint up to 30 temporary extra help deputy clerk-municipal court trainees V, III, II, or I who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee V shall receive an hourly salary at a rate equal to that specified for student worker V in the service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the service of the County of San Diego. A deputy clerk-municipal court trainee I shall receive a biweekly salary at a rate equal to that specified for student worker I in the service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for a period not to exceed six months from the first day of the month following their date of graduation.

(y) Twelve deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for deputy clerk IV. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(z) One deputy clerk-municipal court personnel officer or personnel officer II or I, as the case may be. A deputy clerk-municipal court personnel officer shall receive a biweekly salary at a rate equal to that specified for departmental personnel officer III in the classified service of the County of San Diego. A deputy clerk-personnel officer II shall receive a biweekly salary at a rate equal to that specified for departmental personnel officer II in the classified service of the County of San Diego. A deputy clerk-personnel officer I shall receive a biweekly salary at a rate equal to that specified for departmental personnel officer I in the classified service of the County of San Diego.

(aa) Nine deputy clerk-analysts III, II, I, or trainee, administrative assistant III, II, or I, as the case may be. A deputy clerk-analyst III shall receive a biweekly salary at a rate equal to that specified for analyst III in the classified service of the County of San Diego. A deputy clerk-analyst II shall receive a biweekly salary at a rate equal to that specified for analyst II in the classified service of the County of San

Diego. A deputy clerk-analyst I shall receive a biweekly salary at a rate equal to that specified for analyst I in the classified service of the County of San Diego. A deputy clerk-analyst trainee shall receive a biweekly salary at a rate equal to that specified for analyst trainee in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for an analyst III in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for an analyst II in the classified service of the County of San Diego. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for an analyst I in the classified service of the County of San Diego.

(ab) Two deputy clerk-staff development coordinators or staff development specialists, as the case may be. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego.

(ac) One deputy clerk-court collection officer III who shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer III in the classified service of the County of San Diego.

(ad) Five deputy clerk-court collection officers II or I, as the case may be. A deputy clerk-court collection officer II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the classified service of the County of San Diego. A deputy clerk-court collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego.

(ae) Eight deputy clerk-court referral officers II or deputy clerk-court referral officers I, as the case may be. A deputy clerk-court referral officer II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of San Diego County. A deputy clerk-court referral officer I shall receive a biweekly salary at a rate 9 percent below that specified for the class of deputy probation officer in the classified service of San Diego County.

(af) Three deputy clerk-associate, assistant, or junior accountants, as the case may be. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego. A deputy clerk-junior accountant

shall receive a biweekly salary at a rate equal to that specified for junior accountant in the classified service of the County of San Diego.

(ag) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (c) to (w), inclusive, and (y) to (af), inclusive, and under Sections 74346 and 74352 may be increased by up to 136 additional positions by joint action of a majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to the positions shall be the same as those applicable to the class of those positions. The action of a majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective upon adoption of a resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution became effective, unless earlier ratified by the Legislature.

SEC. 17. Section 74345 of the Government Code is amended to read:

74345. (a) All matters affecting the employment and compensation (including salary and fringe benefits) of municipal court officers and attachés not specifically provided for in this article or other provisions of state law shall be governed by the then-current ordinances and resolutions of the Board of Supervisors of the County of San Diego in the same manner as these employment and compensation provisions may now or hereafter affect employees of the County of San Diego in the comparable classes specified in this section or in Sections 73649, 73957, 74348, and 74749 if other comparable classes are specified in these sections. Whenever in the ordinances or resolutions action or approval is required to be taken or given by the chief administrative officer or the county personnel director, it shall be taken or given as to municipal court officers and attachés, other than those serving at the pleasure of the court, by the court administrator with the approval of a majority of the judges or their designees, or as to persons serving at the pleasure of the court, by a majority of the judges or their designees.

(b) The hereinafter specified court classes are deemed to be comparable in job level to the specified comparable classes in the service of the County of San Diego. Whenever the salaries of such classes in the service of the County of San Diego are adjusted by the board of supervisors, the salaries of the comparable classes in the office of the court administrator shall be adjusted a commensurate amount effective on the same date. In no event shall the salary of the clerk, or any deputy clerk who occupied his or her position on the day prior to the effective date of this section, be less than his or her salary on that day. Any person whose title is changed as a result of the

enactment of or of any amendments to this article shall receive credit for continued service to which he or she would be entitled under his or her previous position and shall receive compensation at the step covering such length of service. Thereafter, any increments earned by additional service in grade shall take effect upon the first day of the pay period following completion of such required service. The comparable classes are as follows:

Municipal Court Class	County Class
Deputy clerk-principal division manager III	Legal procedures clerk III
Deputy clerk-division manager III	Legal procedures clerk III
Deputy clerk-division manager II	Legal procedures clerk III
Deputy clerk-division manager I	Legal procedures clerk III
Deputy clerk-intermediate clerk typist	Intermediate clerk typist
Deputy clerk-junior clerk typist	Junior clerk typist
Deputy clerk V	Legal procedures clerk III
Senior deputy clerk	Legal procedures clerk III
Deputy clerk IV	Legal procedures clerk III
Deputy clerk III	Legal procedures clerk III
Deputy clerk II	Legal procedures clerk II
Deputy clerk I	Legal procedures clerk I
Deputy administrative clerk III	Legal procedures clerk III
Deputy administrative clerk II	Legal procedures clerk III
Deputy administrative clerk I	Legal procedures clerk II
Deputy clerk-municipal court personnel officer	Departmental personnel officer III
Deputy clerk-personnel officer II	Departmental personnel officer II
Deputy clerk-personnel officer I	Departmental personnel officer I
Deputy clerk-data entry supervisor	Data entry supervisor
Deputy clerk-senior data entry operator	Senior data entry operator
Deputy clerk-data entry operator	Data entry operator
Deputy clerk-interpreter coordinator	Legal procedures clerk III
Deputy clerk-senior interpreter	Legal procedures clerk III
Deputy clerk-interpreter supervisor	Legal procedures clerk III
Deputy clerk-court interpreter	Legal procedures clerk III
Deputy clerk-administrative secretary IV	Administrative secretary IV

Deputy clerk-administrative secretary III	Administrative secretary III
Deputy clerk-administrative secretary II	Administrative secretary II
Deputy clerk-administrative secretary I	Administrative secretary I
Deputy clerk-municipal court secretary	Confidential legal secretary III
Deputy clerk-administrative assistant III	Administrative assistant III
Deputy clerk-administrative assistant II	Administrative assistant II
Deputy clerk-administrative assistant I	Administrative assistant I
Deputy clerk-administrative assistant trainee	Administrative assistant trainee
Deputy clerk-staff development specialist	Staff development specialist
Deputy clerk-staff development coordinator	Staff development specialist
Deputy clerk-principal systems analyst	Principal systems analyst
Deputy clerk-senior systems analyst	Senior systems analyst
Deputy clerk-associate systems analyst	Associate systems analyst
Deputy clerk-assistant systems analyst	Assistant systems analyst
Deputy clerk-systems analyst trainee	Systems analyst trainee
Deputy clerk-systems support analyst II	Systems support analyst II
Deputy clerk-systems support analyst I	Systems support analyst I
Deputy clerk-systems support analyst trainee	Systems support analyst trainee
Deputy clerk-LAN systems analyst I	DIS LAN systems analyst I
Deputy clerk-LAN systems analyst II	DIS LAN systems analyst II
Deputy clerk-LAN systems analyst III	DIS LAN systems analyst III
Deputy clerk-LAN systems supervisor	DIS LAN systems supervisor
Deputy clerk-municipal court computer specialist I	Department computer specialist I

Deputy clerk-municipal court computer specialist II	Departmental computer specialist II
Deputy clerk-municipal court computer specialist III	Departmental computer specialist III
Deputy clerk-accounting manager	Legal procedures clerk III
Deputy clerk-senior accountant	Senior accountant
Deputy clerk-associate accountant	Associate accountant
Deputy clerk-assistant accountant	Assistant accountant
Deputy clerk-junior accountant	Junior accountant
Deputy clerk-law clerk	Law clerk
Deputy clerk-research attorney I	Deputy county counsel I
Deputy clerk-research attorney II	Deputy county counsel II
Deputy clerk-research attorney III	Deputy County Counsel III
Deputy clerk-research attorney IV	Deputy county counsel IV
Deputy clerk-legal assistant I	Legal assistant I
Deputy clerk-legal assistant II	Legal assistant II
Deputy clerk-administrative services manager I	Administrative services manager I
Deputy clerk-administrative services manager II	Administrative services manager II
Deputy clerk-administrative services manager III	Administrative services manager III
Deputy clerk-principal administrative analyst	Principal administrative analyst
Deputy clerk-analyst trainee	Analyst trainee
Deputy clerk-analyst I	Analyst I
Deputy clerk-analyst II	Analyst II
Deputy clerk-analyst III	Analyst III
Deputy clerk-substance abuse assessor I	Deputy probation officer
Deputy clerk-substance abuse assessor II	Deputy probation officer
Deputy clerk-court referral officer II	Deputy probation officer
Deputy clerk-court referral officer I	Deputy probation officer
Deputy clerk-domestic violence counselor	Deputy probation officer
Deputy clerk-court collection officer I	Revenue and recovery officer I
Deputy clerk-court collection officer II	Revenue and recovery officer II

Deputy clerk-court collection officer III	Revenue and recovery officer III
Deputy clerk-pretrial services manager	Deputy probation officer
Deputy clerk-supervising pretrial services officer	Deputy probation officer
Deputy clerk-pretrial services officer	Deputy probation officer
Deputy clerk-volunteer program coordinator	Legal procedures clerk III

Notwithstanding the comparable classes set forth above, if pursuant to subdivision (e) of Section 73644, subdivision (g) of Section 74344, subdivision (e) of Section 73954, and subdivision (g) of Section 74745, the class of deputy clerk IV is entitled to receive a biweekly salary at a rate equal to that specified for superior court clerks in the superior court service of the County of San Diego, the comparable county class for deputy clerk IV and senior deputy clerk shall be the superior court clerk in the superior court service of the County of San Diego, except with respect to benefits in which case the comparable county class shall be legal procedures clerk III. Further, notwithstanding the comparable classes set forth above, the comparable class for the class of deputy clerk-court interpreter for purposes of salary shall be the class of superior court clerk interpreter in the superior court service of the County of San Diego and the comparable class with respect to benefits shall be the class of legal procedures clerk III.

(c) Persons employed on or after January 1, 1975, in a class eligible for advancement in range shall receive the same step increases applicable to persons so employed in the County of San Diego on or after July 1, 1974. Persons employed prior to January 1, 1975, in a class eligible for advancement in range shall receive the same step increases applicable to persons so employed in the County of San Diego prior to July 1, 1975.

(d) Officers and attachés may be appointed to a class and position in the service of a court in one judicial district from the service of a court in another judicial district within the County of San Diego, from the service of the County of San Diego, from the service of the Superior Court of the County of San Diego, or from the service of the marshal, in the same manner that employees of the County of San Diego may be appointed in departments of the county. In determining the step of the salary range at which such employee shall be paid, the employee shall be given credit for the immediately preceding continuous prior service to a court, the marshal, or the County of San Diego.

(e) A promotion is an appointment to a class compensated at a higher base salary, at any like-numbered step, than the class

relinquished. Upon promotion, an employee shall be placed at the lowest step which provides at least a 5-percent increase over the base salary of the step occupied in the former class, but in no event higher than the top step of the class to which promoted.

(f) A demotion is an appointment to a class compensated at a lower base salary, at any like-numbered step, than the class relinquished. Upon demotion, an employee shall be placed at the same numbered step in the class to which he or she was demoted as in the former class, except that the step shall not be set lower than the normal entry step. If the demotion is to the class in which the employee served immediately prior to being promoted, the employee's step shall be that held immediately prior to the promotion.

SEC. 18. Section 74348 of the Government Code is amended to read:

74348. (a) In addition to the salary provided in this article, the classes of attachés of the municipal court shall receive, and they shall be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the employees of the County of San Diego in the comparable classes specified in Section 74345. The court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of chief probation officer of the County of San Diego. The assistant court administrator and deputy court administrators shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of assistant chief probation officer of the County of San Diego. All persons employed as a deputy clerk-accounting manager or deputy clerk-division managers III, II, or I shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of administrative assistant III of the classified service of the County of San Diego. However, all officers, employees, and attachés of the municipal court shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego. The purpose and intent of this subdivision is to provide all court attachés except judicial secretaries, commissioners, traffic trial commissioners, court reporters, and the traffic referee with any and all fringe benefits, but no more than those which are available to their comparable classes in the service of the County of San Diego as specified in this section or in Section 74345. Whenever action or approval by the chief administrative officer or the county personnel director is required for the county benefit, it shall be taken or given as to comparable municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of a majority of the judges or their designees, or as to the court administrator and others serving at the pleasure of the court, by a

majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as for employees of the County of San Diego in comparable classes. A majority of the judges may adopt rules for the conduct of and personnel privileges to be afforded the attachés of the court, excluding fringe benefits.

(b) All attachés other than the traffic referee, commissioners, traffic trial commissioners, court administrator, court reporters, judicial secretaries, and other persons serving at the pleasure of their appointing authority, may be appointed, promoted, removed, suspended, laid off, or discharged for cause by the appointing authority subject in such appointment, promotion, removal, suspension, layoff, or discharge to civil service provisions applicable to the classified personnel of the County of San Diego. Whenever such attachés are appointed or promoted to a position, they must serve a probationary period of at least one year, but not to exceed 18 months, as specified in the job announcement for the class prior to appointment. If the San Diego County Charter is amended to repeal the Civil Service Rules and the board of supervisors adopts new Personnel Rules, the reference to civil service provisions in this subdivision shall mean the personnel rule provisions.

SEC. 19. Section 74352 of the Government Code is amended to read:

74352. By order entered upon the minutes of the court, a majority of the judges of the municipal court of the San Diego Judicial District may direct the court administrator to appoint as many competent judicial secretaries as the business of the court requires, not to exceed eight, who shall serve at the pleasure of the court administrator. One of these secretaries may be appointed by the court administrator as the chief judicial secretary and, while serving in that capacity, shall receive a biweekly salary of one thousand five hundred eighty-seven dollars and twenty cents ($1,587.20). An appointment after January 1, 1997, to such position shall receive a biweekly salary at a rate equal to that specified for the classification of confidential legal secretary III in the classified service of the County of San Diego and may be at any step within the salary range.

A judicial secretary other than the chief judicial secretary shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego. Appointments to judicial secretary may be at any step within the salary range.

Whenever the salary of administrative secretary IV or confidential legal secretary III of the classified service of the County of San Diego is adjusted by the Board of Supervisors of the County of San Diego, the salaries of a chief judicial secretary appointed after January 1, 1997, and judicial secretaries shall be adjusted a commensurate percentage on the same date, such adjustments to take effect on the effective date of any amendments to this article. The salary of a chief judicial secretary appointed before January 1, 1997, shall not be

adjusted until such time as the salary of a judicial secretary equals or surpasses that of the chief judicial secretary whereby it then shall be adjusted the same commensurate percentage to equal the biweekly salary of judicial secretary.

Notwithstanding Section 74348, judicial secretaries shall receive and be entitled to the same number of holidays, leaves of absence and all other fringe benefits as are now or may hereafter be provided for administrative secretary IV or confidential legal secretary III in the classified service of the County of San Diego. However, the chief judicial secretary and judicial secretaries shall be entitled to: (a) earn sick leave credit at the rate of 5.385 percent of each hour of paid service during the pay period; (b) earn vacation credit at the rate of 5.769 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 25 working days where the employee has less than 10 years of continuous service; and (c) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 35 working days where the employee has 10 years or more of continuous service.

SEC. 20. Section 74368 of the Government Code is amended to read:

74368. The marshal may make the following appointments:

(a) One assistant marshal.

(b) Four captains.

(c) Five lieutenants.

(d) Twenty sergeants.

(e) One hundred ninety-two deputy marshals.

Any deputy marshal who may be assigned by the marshal to one of 10 positions designated as lead deputy shall receive, while serving in that capacity, biweekly compensation at a rate 5 percent higher than that received by the deputy.

The marshal may, at his or her discretion, fill a deputy marshal or court service officer position by accepting a lateral transfer from another California peace officer agency. The transferee shall have completed a California P.O.S.T. certified basic academy and been employed for at least one year in a position enumerated in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code within the past three years.

(f) One administrative secretary I, II, or III.

(g) One administrative services manager I, II, or III or administrative assistant III.

(h) One accounting technician.

(i) Two senior typists.

(j) Thirty-five field service officers.

Notwithstanding any other provisions of this article, in no event shall a field service officer's salary be less than 65 percent of the salary of a deputy marshal at the corresponding pay step. The field service officer is a peace officer trainee position which requires appointees

to be at least 18 years of age and meet the qualifications and standards prescribed for deputy marshals. At the time an incumbent in the class of field service officer attains the age of 21, he or she may be appointed by the marshal to a position in the class of deputy marshal or court service officer, provided such position is open, without further qualification or examination.

A field service officer shall receive 65 percent of the uniform allowance prescribed for deputy marshals. In the event that a field service officer is appointed to the class of deputy marshal or court service officer, he or she shall receive the amount of reimbursement of the cost of required uniforms and equipment prescribed for a newly hired deputy marshal or court service officer, less any reimbursement received by him or her for the cost of required field service officer uniforms and equipment.

(k) One departmental computer specialist I, II, or III.

(*l*) Nine legal procedures clerks III.

(m) Forty-three legal procedures clerks II or I.

(n) One hundred five court service officers. In no event shall a court service officer's salary be less than 80 percent of a deputy marshal at the corresponding pay step. A court service officer shall receive the same uniform allowance prescribed for a deputy marshal, under the same conditions prescribed for deputy marshals. The marshal may appoint a court service officer to a vacant position of deputy marshal without further qualification or examination. In the event that a court service officer is appointed to the class of deputy marshal, he or she shall receive the amount of reimbursement prescribed for a newly hired deputy marshal, less any reimbursement received by him or her for the cost of required court service officer uniforms and equipment. Court service officers shall be peace officers pursuant to Section 830.36 of the Penal Code. Notwithstanding any other provision of law, court service officers shall be general members of the county employees retirement system.

Any court service officer who meets length of service, educational and performance requirements established by the marshal and approved by the county personnel director may receive a biweekly compensation at a rate $7^1/_2$ percent higher than that otherwise received by a court service officer.

(o) Any person specified in subdivision (f) or (i), who may be assigned by the marshal to one of the positions designated as executive secretary or administrative-personnel secretary shall receive, while serving in that capacity, biweekly compensation at a rate 10 percent higher than that specified for such person's class and step.

(p) Two supervising legal services clerks.

(q) Three marshal's radio trainees or emergency services dispatchers.

(r) Two administrative assistants III, II, I, or trainee.

(s) Two senior systems analysts or senior applications engineers.

(t) Notwithstanding Section 74369, up to 15 extra help positions (hourly rate) to be appointed at a level as determined by and serve at the pleasure of the marshal. Such appointments shall be temporary for a period not to exceed six months, plus one additional period at the marshal's option, not to exceed six months. Notwithstanding any other provisions of this section, the marshal may fill these positions with persons employed for less than 121 working days during a fiscal year on a part-time basis.

(u) Notwithstanding Section 74369, the marshal may appoint up to six temporary extra help marshal student workers I, II, or III who shall be paid at an hourly rate and shall serve at the pleasure of the marshal. A marshal student worker I, II, or III shall receive an hourly salary at the rate equal to that specified for the class of student worker I, II, or III respectively in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a marshal student worker class may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(v) Two associate systems analysts or assistant systems analysts or applications engineers I or II.

(w) Notwithstanding Section 74369, up to five provisional workers may be appointed by and serve at the pleasure of the marshal. The class of provisional worker provides for temporary appointments to positions in classes not listed in Section 74370 pending a review and evaluation of the duties of these positions by the marshal, and the establishment of specific classes as provided in this subdivision. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the marshal as to the establishment of such classes. The rate of pay for each individual employed in this class of provisional worker shall be within the range proposed for the class pending establishment, at a rate determined by the marshal following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to provisional workers shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the marshal and the board of supervisors in accordance with established county personnel and budgetary procedures. The marshal may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation

so provided. Persons occupying provisional worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the marshal and the board of supervisors.

(x) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (s), inclusive, (u), (v) and (w) of this section may be increased by up to 100 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature.

SEC. 21. Section 74370 of the Government Code is amended to read:

74370. (a) The hereinafter enumerated classes of positions in the marshal's office of San Diego County are deemed to be equivalent in job, salary level, and fringe benefit level to certain classes in the service of the County of San Diego and whenever the salary and fringe benefit level of a class in the service of the County of San Diego is adjusted by the board of supervisors, the salary and fringe benefit level of the equivalent class in the marshal's office shall be adjusted in the same amount, effective on the same date.

The equivalent classes are as follows:

Marshal class	County class
Assistant marshal	Assistant sheriff
Captain	Deputy sheriff—captain
Lieutenant	Deputy sheriff—lieutenant
Sergeant	Deputy sheriff—sergeant
Deputy marshal	Deputy sheriff
Court service officer	Revenue and recovery officer II
Field service officer	Revenue and recovery officer trainee
Legal procedures clerk III	Legal procedures clerk III
Legal procedures clerk II	Legal procedures clerk II

Legal procedures clerk I	Legal procedures clerk I
Senior typist	Senior clerk-typist
Administrative assistant III	Administrative assistant III
Administrative assistant II	Administrative assistant II
Administrative assistant I	Administrative assistant I
Administrative trainee	Administrative trainee
Accounting technician	Accounting technician
Senior systems analyst	Senior systems analyst
Associate systems analyst	Associate systems analyst
Assistant systems analyst	Assistant systems analyst
Department computer specialist III	Department computer specialist III
Department computer specialist II	Department computer specialist II
Department computer specialist I	Department computer specialist I
Senior applications engineer	Senior applications engineer
Applications engineer I	Applications engineer I
Applications engineer II	Applications engineer II
Administrative secretary III	Administrative secretary III
Administrative secretary II	Administrative secretary II
Administrative secretary I	Administrative secretary I
Administrative services manager I	Administrative services manager
Administrative services manager II	Administrative services manager
Administrative services manager III	Administrative services manager
Supervising legal services clerk	Supervising legal services clerk
Radio trainee	Radio trainee
Emergency services dispatcher	Emergency services dispatcher

(b) In addition to the salary provided in this article, officers, deputies, and other attachés of the marshal's office shall receive, and they shall be entitled to, the same number of holidays, leaves of absence, retirement benefits, deferred compensation benefits, and all other fringe benefits as are now or may hereafter be provided for the specified comparable employees of the County of San Diego.

For purposes of providing the fringe benefits specified in this section, each class in the marshal's office shall receive benefits equal

to those of the comparable class in the service of the County of San Diego as specified in this section. The marshal shall receive the same fringe benefits received by the classification of Chief Probation Officer of the County of San Diego. However, all officers, deputies, and other attachés of the marshal's office shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego.

The purpose and intent of this subdivision is to provide all marshal's personnel with any and all fringe benefits, but no more than those, which are available to their comparable classes in the service of the County of San Diego, as specified in this section. Whenever action or approval by the chief administrative officer or the county personnel director is required for a county benefit, it shall be taken or given as to comparable marshal's employees, by the marshal, or as to the marshal by the majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The marshal may adopt rules for the conduct of, and personnel privileges to be afforded to, marshal employees, excluding fringe benefits.

SEC. 22. Section 74640 of the Government Code is amended to read:

74640. There are in the County of Santa Barbara two municipal court districts, known as the Santa Barbara Municipal Court and the North Santa Barbara County Municipal Court.

SEC. 23. Section 74640.1 of the Government Code is amended to read:

74640.1. The North Santa Barbara County Municipal Court is comprised of three divisions, embracing that territory in the county which was specified to be within the Santa Maria Municipal Court District, the Lompoc Municipal Court District, and the Solvang Justice Court District as they existed on December 31, 1994; and with such modifications to division boundaries as may thereafter be made by the board of supervisors, after public hearing, or by operation of law.

SEC. 24. Section 74640.2 of the Government Code is amended to read:

74640.2. In order that the citizens residing in each division of the North Santa Barbara County Municipal Court may have convenient access to the court, sufficient court facilities, including staff and other necessary personnel, shall be maintained in each division at the following sites or as otherwise designated by the board of supervisors:

(a) In the Santa Maria Division, in the City of Santa Maria.

(b) In the Lompoc Division, in the City of Lompoc.

(c) In the Solvang Division, in the City of Solvang.

SEC. 25. Section 74642 of the Government Code is amended to read:

74642. Within the Santa Barbara Judicial District there shall be the following officers, attachés, and employees:

	Santa Barbara Municipal Court	Salary Range
2	Account Clerk III-Ct.	405
1	Account Technician-Ct.	433
1	Accountant II-Ct.	493
1	Assistant Clerk-Admin.Officer (SB)	556
1	Clerk-Administrative Officer (SB)	606
2	Collections Rep.-Ct.	431
2	Commissioner, Municipal Court	3,260.80 BI-WKLY
1	Court Clerk Chief-Ct.	507
2	Court Interpreter	444
1	Department Analyst-Ct.	510
1	Department DP Spec. Sr.-Ct.	512
1	Department DP Spec.-Ct.	489
1	EDP System & Prog. Analyst I-Ct. OR	529
	EDP System & Prog. Analyst II-Ct.	546
1	Exec. Secretary-Ct.	451
33	Judicial Asst. I-Ct. OR	395
	Judicial Asst. II-Ct.	420
2	Judicial Asst. I-Ct.D OR	395
	Judicial Asst. II-Ct.	420
13	Judicial Asst. III-Ct.	444
1	Judicial Asst. III-Ct.D	444
1	Judicial Cal. Coord.-Ct.	487
5	Judicial Services Supv.-Ct.	463
1	Official Court Reporter-C	538
1	Official Court Reporter-E	538
1	Official Court Reporter-Municipal Court	538
4	Own Recognizance Officer	486
1	Own Recognizance Supervisor	506

SEC. 26. Section 74643 of the Government Code is amended to read:

74643. Within the Santa Maria Division of the North Santa Barbara County Municipal Court there shall be the following officers, attachés, and employees:

	Santa Maria Division	Salary Range
1	Account Tech.—Ct.	433
1	Asst. Clerk—Administrative Officer—NCMC	546
2	Own Recognizance Officer	486
1	Own Recognizance Supervisor	506
1	Clerk–Administrative Officer—NCMC	606
1	Commissioner, Municipal Court	$3,206/BI-WKLY
2	Court Interpreter	444
1	Department DP Specialist—Ct.	489
1	Executive Secretary—Ct.	451
19	Judicial Asst I/II—Ct.	420
5	Judicial Asst III—Ct.	444
3	Judicial Services Supv.—Ct.	463
1	Traffic Referee	$2,290/BI-WKLY

SEC. 27. Section 74644 of the Government Code is amended to read:

74644. Within the Lompoc Division of the North Santa Barbara County Municipal Court there shall be the following officers, attachés, and employees:

	Lompoc Division	Salary Range
1	Asst. Clerk-Admin. Officer NCMC	546
1	Court Clerk Chief—Ct.	507
6	Judicial Asst. I/II—Ct.	420
2	Judicial Asst. III—Ct.	444
1	Court Interpreter	444

SEC. 28. Section 74644.3 is added to the Government Code, to read:

74644.3. Within the Solvang Division of the North Santa Barbara County Municipal Court there shall be the following officers, attachés, and employees:

	Solvang Division	Salary Range
1	Departmental DP Specialist—Ct.	489
4	Judicial Asst. I/II—Ct.	395/420
2	Judicial Asst. III—Ct.	444
1	Business Manager I—Ct.	525

SEC. 29. Section 74644.5 of the Government Code is amended to read:

74644.5. Within the Santa Barbara County Marshal's office there shall be the following officers, attachés, and employees:

Number	Position	Salary Range
Marshal of Santa Barbara County		
2	Assistant Marshal	550
16	Deputy Marshal	502
5	Judicial Assistant I—Marshal	395
2	Judicial Assistant II—Marshal	420
2	Legal Services Specialist	420
4	Marshal's Sergeant	537
1	Clerk Principal—Ct.	451
1	Marshal	585

SEC. 29.5. Section 74662.5 is added to the Government Code, to read:

74662.5. Any traffic referee appointed pursuant to Section 72400 in Santa Cruz County shall receive a salary equal to 60 percent of a salary of a judge of the municipal court.

SEC. 30. Section 74663 of the Government Code is amended to read:

74663. (a) In the Santa Clara County Judicial District there shall be one chief administrative officer/clerk who shall receive a base salary of three thousand three hundred sixty dollars and sixty-four cents ($3,360.64) biweekly, plus or minus $12^1/_2$ percent, and shall, notwithstanding Section 74666, be appointed by and serve at the pleasure of a majority of the judges of the municipal court. In addition, there will be one legal aide (unclassified) and one staff attorney (unclassified) who shall serve one-year terms. The legal aide shall be appointed by and serve at the pleasure of a majority of the judges and shall receive a salary as specified in range 44.7, and the staff attorney shall receive a salary as specified in range 38.4A. The Santa Clara County Salary Ordinances No. NS-5.95 and NS-20.95, as amended, for the fiscal year July 1, 1994, through June 30, 1995, are the sources for all salaries.

(b) The clerk-administrative officer may appoint all of the following:

(1) One assistant chief administrative officer/clerk who shall receive a base salary of two thousand seven hundred eleven dollars and ninety-two cents ($2,711.92), biweekly, plus or minus $12^1/_2$ percent.

(2) One deputy administrator/court operations who shall receive a salary as specified in range 39.5A.

(3) One deputy administrator/court services who shall receive a salary as specified in range 39.5A.

(4) One administrative services manager II who shall receive a salary as specified in range 40.9A.

(5) One departmental systems specialist II who shall receive a salary as specified in range 40.7A, or one departmental systems specialist I who shall receive a salary as specified in range 38.7A.

(6) One municipal court department information systems specialist who shall receive a salary as specified in range 24.6Y.

(7) Two management analysts who shall receive a salary as specified in range 36.4A, or associate management analyst B who shall receive a salary as specified in range 32.7A, or associate management analyst A who shall receive a salary as specified in range 29.1A.

(8) Two accountants III who shall receive a salary as specified in range 36.2A, or accountants II who shall receive a salary as specified in range 46.7B, or accountant/auditor appraiser who shall receive a salary as specified in range 43.8B.

(9) One accountant II who shall receive a salary as specified in range 46.7B, or accountant/auditor appraiser who shall receive a salary as specified in range 43.8B.

(10) One administrative support officer I who shall receive a salary as specified in range 32.9A.

(11) Two secretaries III who shall receive a salary as specified in range 43.4B, or secretaries II who shall receive a salary as specified in range 41.4B, or secretaries I who shall receive a salary as specified in range 39.1B.

(12) Two secretaries II who shall receive a salary as specified in range 41.4B, or secretaries I who shall receive a salary as specified in range 39.1B.

(13) One advanced clerk typist who shall receive a salary in range 38.0B.

(14) One clerk typist who shall receive a salary as specified in range 36.5B, or office clerk who shall receive a salary as specified in range 35.0B.

(15) One account clerk II who shall receive a salary as specified in range 38.4B.

(16) One municipal court division manager III who shall receive a base salary of two thousand three hundred sixty-four dollars and eighty-eight cents ($2,364.88) biweekly, plus or minus $12^1/_2$ percent.

(17) Two municipal court division managers II who shall receive a base salary of two thousand one hundred seventy-six dollars and forty cents ($2,176.40) biweekly, plus or minus $12^1/_2$ percent.

(18) Three municipal court division managers I who shall receive a base salary of two thousand forty-three dollars and sixty cents ($2,043.60) biweekly, plus or minus $12^1/_2$ percent.

(19) Three and one-half chief deputy court clerks I who shall receive a salary as specified in range 35.3A.

(20) Thirteen supervising deputy court clerks II who shall receive a salary as specified in range 33.3A.

(21) Four supervising deputy court clerks I who shall receive a salary as specified in range 30.9A.

(22) Ten assistant supervising deputy court clerks who shall receive a salary as specified in range 29.0A.

(23) Sixty-two municipal courtroom clerks who shall receive a salary as specified in range 44.8B.

(24) Two hundred two and one-half deputy court clerks II who shall receive a salary as specified in range 38.6B or deputy court clerks I who shall receive a salary as specified in range 35.9B.

(25) Two court services coordinators who shall receive a salary as specified in range 32.4A.

(26) Seven accountant assistants who shall receive a salary as specified in range 40.5B.

(27) One security guard who shall receive a salary as specified in range 38.9B.

(28) One stock clerk who shall receive a salary as specified in range 36.5B.

(29) One messenger-driver who shall receive a salary as specified in range 36.5B.

(30) Two deputy court clerks I (unclassified) who shall receive a salary as specified in range 35.9B.

(31) Thirty-four municipal court reporters (unclassified) who shall receive a salary as specified in range 51.5K.

SEC. 31. Section 74665 of the Government Code is amended to read:

74665. In the Santa Clara County Judicial District the judges of these courts, pursuant to Section 72194, may appoint as many additional reporters as the business of the courts may require, who shall be known as official reporters pro tempore, and who shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in those sections for reporting testimony and proceedings, the official reporters pro tempore shall in all cases receive one hundred eight dollars and twenty-six cents ($108.26) per half day and two hundred sixteen dollars and fifty-two cents ($216.52) per day, which shall, upon order of the court, be a charge against the general fund of the county. If the board of supervisors increases the per diem fees for official court reporters pro tempore in the superior court pursuant to Section 70046.1, this increase shall apply equally for all official reporters pro tempore in the municipal courts, but all of these increases shall be effective only until the second year following the calendar year in which the adjustment is made.

SEC. 32. Section 74744 of the Government Code is amended to read:

74744. There shall be one court administrator who shall serve as clerk of the court and who shall be appointed by a majority of the

judges of the court. The salary of the court administrator shall be within the biweekly rate range ES-15 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "a majority of the judges."

SEC. 32.5. Section 74745 of the Government Code is amended to read:

74745. The court administrator may appoint with the approval of the judges:

(a) Three deputy court administrators. Persons appointed to this position on or after January 1, 1993, shall serve at the pleasure of the court administrator. The deputy court administrators shall receive a salary within the biweekly rate range ES-6 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator." Notwithstanding subdivision (b) of Section 74749, persons who hold the position of deputy clerk-administrative services manager III, deputy clerk division manager III and II on January 1, 1993, may be appointed by the court administrator to the position of deputy clerk-deputy court administrator without further examination subject to certification by the court administrator that the person possesses the minimum qualifications and necessary skills to perform the duties of the position.

(b) One deputy clerk-administrative assistant trainee, I, II, or III as the case may be. A deputy clerk-administrative assistant trainee shall receive a biweekly salary at a rate equal to that specified for administrative trainee in the classified service of the County of San Diego. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego.

(c) One deputy clerk-division manager I, II, or III, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager III shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II.

(d) Seven deputy clerks V each of whom shall receive a biweekly salary equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities.

(e) One deputy clerk, associate, senior accountant, or accounting manager, as the case may be. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego. A deputy clerk-accounting manager shall receive a biweekly salary at a rate equal to that specified for deputy clerk-division manager III.

(f) One deputy clerk-staff development specialist or a deputy clerk-staff development coordinator, as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

(g) One deputy clerk-volunteer program coordinator. A deputy clerk-volunteer program coordinator shall receive a biweekly salary at a rate equal to the greater of that specified for volunteer program coordinator in the superior court service of the County of San Diego or 15.75 percent higher than that specified for deputy clerk III.

(h) Ten deputy clerks IV. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III.

(i) Sixty-three deputy clerks III, II, or I, or deputy clerk-intermediate clerk typists, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of

the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I classification may be at any step within the salary range. Up to three of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of five deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

(j) One deputy clerk-administrative secretary IV, III, II, or I, as the case may be. A deputy clerk-administrative secretary IV shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(k) Four deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk-interpreter in the superior court service of the County of San Diego.

(*l*) Notwithstanding subdivision (b) of Section 74749, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 74740 to 74750, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class of deputy clerk-court worker shall be within the range proposed for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they

relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the classified service of the County of San Diego to which the pending class shall be tied for benefit purposes. When that appointment is made, the class, compensation (including salary and fringe benefits), and number of those positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to the classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(m) Notwithstanding subdivision (b) of Section 74749, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(n) Notwithstanding subdivision (c) of Section 74749, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, III, or V, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee V shall receive a biweekly salary at a rate equal to that specified for student worker V in the classified service of the County of San Diego. Persons who

graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(o) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 74744.

(p) Three deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for deputy clerk IV. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(q) One deputy clerk-municipal court secretary, who shall receive a salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range.

(r) One deputy clerk-senior systems analyst, associate systems analyst, assistant systems analyst, or systems analyst trainee, or systems support analyst II, I, or trainee, or LAN systems analysts III, II, or I, as the case may be. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego. A deputy clerk-systems support analyst II shall receive a biweekly salary at a rate equal to that specified for systems support analyst II in the classified service of the County of San Diego. A deputy clerk-systems support analyst I shall receive a biweekly salary at a rate equal to that specified for systems support analyst I in the classified service of the County of San Diego. A deputy clerk-systems support analyst trainee shall receive a salary equal to that specified for systems support analyst trainee in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst III shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst III in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst II shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst II in the

classified service of the County of San Diego. A deputy clerk-LAN systems analyst I shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst I in the classified service of the County of San Diego.

(s) One deputy clerk-municipal court computer specialist I, II, or III, as the case may be. A deputy clerk-municipal court computer specialist I, II, or III shall receive a biweekly salary at a rate equal to that specified for departmental computer specialist I, II, or III, respectively, in the classified service of the County of San Diego.

(t) Three deputy clerk-collection officers I, II, or III, as the case may be. A deputy clerk-collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego. A deputy clerk-collection officer II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the classified service of the County of San Diego. A deputy clerk-collection officer III shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer III in the classified service of the County of San Diego.

(u) One deputy clerk-small claims advisor or deputy clerk-small claims counsel, as the case may be. The deputy clerk-small claims advisor shall receive a biweekly salary at a rate of 18.63 percent less than that specified for small claims counsel in the classified service of the County of San Diego. The deputy clerk-small claims counsel shall receive a biweekly salary at a rate equal to that specified for small claims counsel in the classified service of the County of San Diego.

(v) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (a) to (k), inclusive, under subdivisions (m) and (o) to (u), inclusive, and under Section 74743 may be increased by up to 20 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointments of persons to those positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on the adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution is adopted, unless earlier ratified by the Legislature.

SEC. 33. Section 74921.7 of the Government Code is amended to read:

74921.7. There shall be one clerk of the district, to be known as the municipal court administrator, who shall be appointed by and serve at the pleasure of a majority vote of the judges. The municipal

court administrator shall receive a biweekly salary range of 869 in the Tulare County Salary Resolution. He or she shall be the appointing power for those positions listed in Section 74921.10 as being appointed by the municipal court administrator.

SEC. 34. Section 74921.10 of the Government Code is amended to read:

74921.10. The number of positions within each job classification which may be filled by appointment by the municipal court administrator and the marshal are, as follows:

(a) Appointed by the municipal court administrator:

Number	Title	Range
1	Micro-Computer Network Administrator	215
1	Administrative Services Officer I	213
3	Deputy Clerk/Administrator II	202
5	Deputy Clerk/Administrator I	182
1	Collections Supervisor	175
1	Legal Secretary I	173
7	Collector I	165
20	Courtroom Clerk	171
14	Court Clerk II	165
32	Legal Office Assistant II	145
5	Account Clerk	141
2	Office Assistant II	135

(b) Appointed by the marshal, except as provided in Section 74922.5:

Number	Title	Range
1	Chief Marshal's Assistant	231
2	Marshal's Assistant	220
15	Deputy Marshal	178
1	Legal Office Assistant III	155
4	Legal Office Assistant II	145

The marshal shall be management class A-4 and entitled to the benefits in that class as an appointed department head. The chief marshal's assistant and the three marshal's assistants shall be the equivalent of the current management class B and entitled to the general benefits in that class as management personnel.

(c) The marshal may also appoint as many deputy marshal keepers as may be required by law. The deputy marshal keepers shall be compensated at the fee allowed by law for keeping property.

SEC. 35. Section 74954 of the Government Code is amended to read:

74954. (a) Whenever a reference is made to a numbered salary range according to the standard salary schedule in any section of this article, the schedule found in the Napa County Table and Index of Classes shall apply, except as provided otherwise in subdivision (b).

(b) In the event the Board of Supervisors of the County of Napa amends the resolution establishing salary ranges and monthly salary rates on the standard salary schedule for the County of Napa, effective on the date of this act, or adopts a new resolution which provides for a change in compensation for ranges or steps, such changes shall be effective for the municipal court employees under this article on the effective date of the action of the board of supervisors.

SEC. 36. Section 74954.5 of the Government Code is amended to read:

74954.5. (a) Whenever a reference is made to a numbered salary range according to the management and nonclassified personnel salary schedule in any section of this article, the schedule found in the Napa County Table and Index of Classes shall apply thereafter, except as provided otherwise in subdivision (b).

(b) In the event the Board of Supervisors of the County of Napa amends the resolution establishing salary ranges and monthly salary rates for the management and nonclassified personnel of the County of Napa, or adopts a new resolution which provides for a change in compensation for ranges or steps, such changes shall be effective for the municipal court management and nonclassified personnel under this article on the effective date of the action of the board of supervisors.

SEC. 37. Section 74955 of the Government Code is amended to read:

74955. There shall be one court executive officer (clerk of the court) who shall be appointed by, and who shall serve at the pleasure of, a majority of the judges of the municipal court. The court clerk shall be paid a biweekly salary at the rate specified in range 52507A-E in the salary schedule for management and nonclassified personnel. In addition to any other duties imposed by law, the court clerk shall, at the direction of the presiding judge, perform any or all of the following duties:

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

(b) To prepare and administer the budget of the court.

(c) To coordinate with other appropriate county agencies the acquisition, utilization, maintenance, and disposition of county facilities, equipment, and supplies necessary for the operation of the court.

(d) To collect, compare, and analyze statistical data on a continuing basis concerning the status of judicial and nonjudicial

business of the court and to prepare periodic reports and recommendations based on such data.

(e) To serve as liaison for the court with other persons, committees, boards, groups, and associations as directed by the presiding judge.

SEC. 38. Section 74956 of the Government Code is amended to read:

74956. (a) There shall also be the following court employee positions, whose numbers and salary range on the standard salary schedule of the County of Napa shall be as specified:

Position Classification	Number of Funded Positions	Salary Range
Account Clerk I	1.00	00101A-E
Assistant Court Executive Officer	1.00	03706A-E
Branch Manager	1.00	43206A-E
Court Services Supervisor	1.00	54902A-E
Court Executive Officer	1.00	52507A-E
Court Division Supervisor	3.00	54902A-E
Data Clerk	1.00	26801A-E
Family Mediator	0.75	53001A-E
Legal Clerk I	1.00	14901A-E
Legal Clerk I−BI	2.00	14901A-E
Legal Clerk II	10.00	15001A-E
Legal Clerk II-BI	1.00	15001A-E
Legal Clerk I/Int.	1.00	50601A-E
Legal Resident Attorney	1.00	52301A-E
Legal Secretary	2.50	15103A-E
Office Assistant II	4.00	27201A-E
Secretary	1.00	24801A-E
Senior Account Clerk	1.00	00301A-E
Judicial Assistant I/II	13.00	25001A-E
Judicial Assistant III	3.00	60701A-E
Supervisor Account Clerk	1.00	35402A-E
Supervisor Mediator	1.00	08506A-E
Systems Coordinator	1.00	55501A-E

(b) Each such person employed on the effective date of this article in the office of the clerk of the municipal court shall receive credit for prior continuous service in the office, including service in a court superseded upon establishment of the municipal court.

(c) With the approval of the board of supervisors, a majority of the municipal court judges may establish additional positions for officers, attachés, and employees in addition to those provided by subdivision (a). The order and approval establishing any such position shall designate the position title and salary range. Such appointments shall be on an interim basis and shall expire June 30 of the following fiscal year in which such appointments are made unless ratified by the Legislature.

SEC. 39. 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 are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and 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 1154

An act to amend Section 564 of the Code of Civil Procedure, to amend Section 19993.7 of, and to add Section 65088.5 to, the Government Code, and to amend Sections 11474, 44013.5, and 44251 of, and to repeal Sections 39047.4, 39053.1, 40925, 40927, 43705, 44001, 44001.6, 44001.7, 44011, 44012, 44015, 44037.1, 44225.1, 44236.1, 44255, and 44256 of, the Health and Safety Code to amend Sections 5374, 21687, and 103222 of, and to add Section 5259.5 to, the Public Utilities Code, to amend Sections 92.3, 164.10, 164.11, 164.12, 164.13, 164.14, 164.15, 164.16, 253.1, 253.7, 318, 411, 433, 541, 561, and 2557 of, and to repeal Sections 524, 531, and 575 of, the Streets and Highways Code, and to amend Sections 22, 24, 2421.5, 4000.7, 4021, 5064, 12810, 12815, 13003, 14908, 16000, 16056, 16431, 21655.8, 21806, 22651, 23157, 23190, 23250, 23302, 25258, 25279, 26708, 27315, 27365, 34501.12, 34505.9, 35550, 40152, 40225, and 40254 of, and to repeal Section 25258.1 of, the Vehicle Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 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 Omnibus Transportation Act of 1996.

SEC. 2. Section 564 of the Code of Civil Procedure 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 Sections 855 and 5259.5 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 436.222 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. 2.1. Section 564 of the Code of Civil Procedure 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 Sections 855 and 5259.5 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 436.222 of the Health and Safety Code.

(10) In an action by a secured lender for specified 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.

(11) In a case brought by an assignee under an assignment of leases, rents, issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

(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. 3. Section 19993.7 of the Government Code is amended to read:

19993.7. The provisions of this chapter shall not apply to members of the California Highway Patrol nor to a peace officer defined in subdivision (a) of Section 830.36 of the Penal Code.

SEC. 4. Section 65088.5 is added to the Government Code, to read:

65088.5. Congestion management programs, if prepared by county transportation commissions and transportation authorities created pursuant to Division 12 (commencing with Section 130000) of the Public Utilities Code, shall be used by the regional transportation planning agency to meet federal requirements for a congestion management system, and shall be incorporated into the congestion management system.

SEC. 5. Section 11474 of the Health and Safety Code is amended to read:

11474. A court order for the destruction of controlled substances, instruments, or paraphernalia pursuant to the provisions of Section 11473 or 11473.5 may be carried out by a police or sheriff's department, the Department of Justice, or the Department of the California Highway Patrol. The court order shall specify the agency responsible for the destruction. Controlled substances, instruments, or paraphernalia not in the possession of the designated agency at the time the order of the court is issued shall be delivered to the designated agency for destruction in compliance with the order.

SEC. 6. Section 39047.4 of the Health and Safety Code is repealed.

SEC. 7. Section 39053.1 of the Health and Safety Code is repealed.

SEC. 8. Section 40925 of the Health and Safety Code, as amended by Section 8 of Chapter 1192 of the Statutes of 1994, is repealed.

SEC. 9. Section 40925 of the Health and Safety Code, as added by Section 9 of Chapter 1192 of the Statutes of 1994, is repealed.

SEC. 10. Section 40927 of the Health and Safety Code, as added by Chapter 1192 of the Statutes of 1994, is repealed.

SEC. 11. Section 43705 of the Health and Safety Code, as added by Section 2 of Chapter 1008 of the Statutes of 1994, is repealed.

SEC. 12. Section 43705 of the Health and Safety Code, as added by Chapter 1192 of the Statutes of 1994, is repealed.

SEC. 13. Section 44001 of the Health and Safety Code, as amended by Section 17 of Chapter 1192 of the Statutes of 1994, is repealed.

SEC. 14. Section 44001 of the Health and Safety Code, as added by Section 17.5 of Chapter 1192 of the Statutes of 1994, is repealed.

SEC. 15. Section 44001.6 of the Health and Safety Code is repealed.

SEC. 16. Section 44001.7 of the Health and Safety Code is repealed.

SEC. 17. Section 44011 of the Health and Safety Code, as amended by Section 2 of Chapter 929 of the Statutes of 1995, is repealed.

SEC. 18. Section 44011 of the Health and Safety Code, as amended by Section 3 of Chapter 929 of the Statutes of 1995, is repealed.

SEC. 19. Section 44012 of the Health and Safety Code, as amended by Section 21 of Chapter 1192 of the Statutes of 1994, is repealed.

SEC. 20. Section 44012 of the Health and Safety Code, as added by Section 21.5 of Chapter 1192 of the Statutes of 1994, is repealed.

SEC. 21. Section 44013.5 of the Health and Safety Code is amended to read:

44013.5. (a) If the department, in consultation with the state board, determines that substantial demand for emission retrofit devices exists, the department shall develop a program for the certification of emissions retrofit device installations by licensed installers. The department may require installers of emissions retrofit devices to be qualified pursuant to this chapter. The department may assess biennial license fees upon those installers in an amount not to exceed the reasonable cost of administering the emissions retrofit device certification program.

(b) The certification shall be performed at a referee or test-only station and shall be based on a visual inspection of the emissions retrofit device and its installation, and verification of the proper operation of any new or modified components that are a part of the emissions retrofit device, and not on the results of an emissions test.

(c) The department shall develop a program for the identification of retrofitted vehicles at smog check stations and for providing information required for the inspection of those systems to smog check stations.

(d) This section shall become inoperative pursuant to Section 33 of the act adding this section or, in any case, five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following the date upon which this section becomes inoperative, is repealed.

SEC. 22. Section 44015 of the Health and Safety Code, as amended by Section 3 of Chapter 982 of the Statutes of 1995, is repealed.

SEC. 23. Section 44015 of the Health and Safety Code, as amended by Section 4 of Chapter 982 of the Statutes of 1995, is repealed.

SEC. 24. Section 44037.1 of the Health and Safety Code, as amended by Section 25 of Chapter 1192 of the Statutes of 1994, is repealed.

SEC. 25. Section 44037.1 of the Health and Safety Code, as added by Section 25.5 of Chapter 1192 of the Statutes of 1994, is repealed.

SEC. 26. Section 44225.1 of the Health and Safety Code is repealed.

SEC. 27. Section 44236.1 of the Health and Safety Code is repealed.

SEC. 28. Section 44251 of the Health and Safety Code is amended to read:

44251. (a) The state board shall specify smog index numbers for new light-duty passenger vehicles and light-duty trucks with a gross vehicle weight up to 6,000 pounds to be sold in California. That smog index shall be based on certification data quantifying tailpipe and evaporative emissions of ozone precursor chemicals for classes of vehicles.

(b) For diesel fuel vehicles, the smog index shall be based on certification data quantifying tailpipe emissions of ozone precursor chemicals and particulate matter. Particulate emissions from diesel fuel vehicles certified to model year standards that did not include a particulate limit may be assumed to be equal to particulate emissions for model year 1985 diesel fuel vehicles.

(c) The state board shall specify the relative weight of emissions of ozone precursor chemicals and particulates in the smog index values for diesel vehicles. This weighting shall be based on the relative importance of each category of emissions to air quality problems in California.

(d) Smog index number 1.0 shall be assigned to a hypothetical light-duty passenger vehicle, a hypothetical light-duty truck with a gross vehicle weight of 3,750 pounds or less, and a hypothetical light-duty truck with a gross vehicle weight of greater than 3,750 pounds up to 6,000 pounds, emitting the maximum amount of

pollution allowed for that class of vehicle certified for sale in this state as of the January 1 immediately preceding the operative date of this section. The state board shall determine the existing class or classes of vehicles to which the smog index shall be applied.

SEC. 29. Section 44255 of the Health and Safety Code is repealed.

SEC. 30. Section 44256 of the Health and Safety Code is repealed.

SEC. 31. Section 5259.5 is added to the Public Utilities Code, to read:

5259.5. (a) Whenever the commission determines that any household goods carrier or any officer, director, or agent of any household goods carrier has abandoned, or is abandoning stored household goods or property of any shippers under contract with the carrier or carriers, it may commence a proceeding in superior court for the purpose of having the court appoint either a receiver or commission staff to identify the stored items of property, to take possession of the property, and to arrange the return of the property to its owners in accordance with the orders of the court and with regard for the protection of all property rights involved.

(b) The proceeding shall be brought in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the person or corporation complained of has its principal place of business, or in which the person complained of resides. The commission shall commence the proceeding in the name of the people of the State of California, by petition to the superior court, alleging the facts and circumstances involved and praying for appropriate relief by way of mandamus, or injunction, or the appointment of a receiver, and authorizing the commission to arrange for the hiring of a receiver who shall be required to comply with the requirements of Sections 566, 567, and 568 of the Code of Civil Procedure.

(c) The court may also appoint a receiver to manage the business of the household goods carrier or carriers and return property to its owner or owners upon a showing by the commission satisfactory to the court that the abandonment or threatened abandonment by the carrier jeopardizes property or funds of others in the custody or under the control of the carrier. The court may make any other order that it finds appropriate to protect and preserve those funds or property.

(d) In the event a receiver is appointed by the court and the commission is responsible for contracting for a receiver to carry out the duties authorized by this section, the commission may contract on an emergency basis with a qualified person or corporation to serve as receiver under the conditions and guidelines set by the court. The contract for the receiver services may be executed by the commission on an expedited basis and without compliance with the requirements of Sections 11042 and 14615 of the Government Code and Sections 10295 and 10318 of the Public Contract Code. The

receiver shall be paid from the fees collected pursuant to Section 5003.2.

SEC. 32. Section 5374 of the Public Utilities Code is amended to read:

5374. (a) Before a permit is issued or renewed, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services. The commission shall not issue or renew a permit pursuant to this chapter unless the applicant meets both of the following requirements:

(1) It certifies on a form acceptable to the commission that the applicant will maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(2) It provides for a mandatory controlled substance and alcohol testing certification program as adopted by the commission pursuant to Section 1032.1.

(b) (1) Before a certificate is issued or renewed, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services. The commission shall not issue or renew a certificate pursuant to this chapter unless the applicant meets all of the following requirements:

(A) It is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(B) It is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subcarriers, operating vehicles in transportation for compensation under the certificate.

(C) It has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(D) It participates in a program to regularly check the driving records of all persons, whether employees or subcarriers, operating vehicles used in transportation for compensation requiring a class B driver's license under the certificate.

(E) It has a safety education and training program in effect for all employees or subcarriers operating vehicles used in transportation for compensation.

(F) It will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(G) It has filed with the commission the certificate of workers' compensation insurance coverage or statement required by Section 5378.1.

(H) It has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this subdivision may be inspected by the commission and the Department of the California Highway Patrol.

(I) It provides for a mandatory controlled substance and alcohol testing certification program as adopted by the commission pursuant to Section 1032.1.

(2) With respect to subparagraphs (B) and (F) of paragraph (1), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(c) In addition to the requirements in subdivision (b), class A and class B charter-party carriers shall meet all other state and, where applicable, federal regulations as prescribed.

(d) The commission may delegate to its executive director or that executive director's designee the authority to renew, or authorize the transfer of, charter-party carrier permits or certificates and to make the findings specified in subdivision (b) that are necessary to that delegated authority.

SEC. 33. Section 21687 of the Public Utilities Code is amended to read:

21687. (a) Whenever any airport, for which payments have been made from the Aeronautics Account or any predecessor fund, ceases to be used as an airport open to the general public for a period in excess of one year, the public entity to which those payments were made shall pay to the state an amount computed by the department, and those funds shall be deposited in the Aeronautics Account. The amount shall equal the total of all payments made for the airport from the Aeronautics Account during the preceding 20 years less 5 percent of the amount of a particular payment multiplied by the number of years since the payment was made, or the unused balance, whichever is greater. This section does not apply to an airport that is replaced by a comparable facility, as determined by the department, within a period of one year.

(b) This section does not apply in the case of an airport for which the department, on or after January 1, 1981, has suspended the airport permit and for which payments made pursuant to this article are being expended to correct the deficiency or condition which resulted in the suspension of the airport's permit.

SEC. 34. Section 103222 of the Public Utilities Code is amended to read:

103222. (a) Contracts for the purchase of supplies, equipment, and materials in excess of twenty-five thousand dollars ($25,000) shall be awarded to the lowest responsible bidder after competitive

bidding, except in an emergency declared by the vote of seven members of the board.

(b) When the contract is for less than fifty thousand dollars ($50,000), the board may authorize the general manager to act for the board.

SEC. 35. Section 92.3 of the Streets and Highways Code is amended to read:

92.3. (a) The department shall do both of the following:

(1) Discontinue further water intensive freeway landscaping and use drought resistant landscaping whenever feasible, taking into consideration such factors as erosion control and fire retardant needs.

(2) Eliminate any dependency on imported water for landscaping as soon as practicable.

(b) The department shall require the use of recycled water for the irrigation of freeway landscaping when it finds and determines that all of the following conditions exist:

(1) The recycled water is of adequate quality and is available in adequate quantity for the proposed use.

(2) The proposed use of the recycled water is approved by the California regional water quality control board having jurisdiction.

(3) There is a direct benefit to the state highway program for the proposed use of recycled water.

(4) The recycled water is supplied by a local public agency or water public utility able to contract for delivery of water and the installation, maintenance, and repair of facilities to deliver the water.

(5) The installation of the water delivery facilities does not unreasonably increase any hazard to vehicles on the freeway or create unreasonable problems of highway maintenance and repair.

(c) In cooperation with local public agencies and water public utilities, the department shall permit local public agencies and water public utilities to place transmission lines for recycled water in freeway rights-of-way for use by the local public agencies and water public utilities to transmit recycled water to others, when to do so will promote a beneficial use of recycled water and that transmission does not unreasonably interfere with use of the freeway or unreasonably increase any hazard to vehicles on the freeway, subject to paragraphs (1) to (5), inclusive, of subdivision (b) and the following additional requirements:

(1) The local public agency or water public utility holds the department harmless for any liability caused by a disruption of service to other users of the recycled water and will defend the department in any resulting legal action and pay any damages awarded as a result of that disruption.

(2) The department, in cooperation with the local public agency or water public utility, may temporarily interrupt service in order to add to or modify its facilities without liability, as specified in paragraph (1).

(3) The local public agency or water public utility obtains and furnishes the department an agreement by all other users of recycled water from the transmission system holding the department harmless for any disruption in service.

(4) The local public agency or water public utility has furnished the department a list of other recycled water users and information on any backup system or other source of water available for use in case of a service disruption.

(5) The local public agency is responsible for the initial cost or any relocation cost of the recycled water transmission lines for service to other users in the right-of-way and waives its rights to require the department to pay the relocation costs pursuant to Sections 702 and 704.

(6) The local public agency or water public utility maintains the water transmission system subject to reasonable access for maintenance purposes to be negotiated between the department and the local public agency or water public utility.

(7) The department has first priority with respect to the recycled water supply contracted for by the department.

(8) The local public agency or water public utility installs an automatic control system which will allow the water transmission system to be shut down in case of an emergency. The department shall have access to all parts of the transmission system for purposes of the agreement.

(9) All transmission lines are placed underground and as close as possible to the freeway right-of-way boundary or at other locations authorized by the department.

(10) The plans and specifications for the recycled water transmission facilities have been approved by the department prior to construction.

(d) As used in this section:

(1) "Local public agency" means any local public agency which transmits or supplies recycled water to others.

(2) "Water public utility" means any privately owned water corporation which is subject to the jurisdiction and control of the Public Utilities Commission.

SEC. 36. Section 164.10 of the Streets and Highways Code is amended to read:

164.10. For purposes of subdivision (e) of Section 164.3, the eligible interregional and intercounty routes include all of the following:

Route 1.

Route 2, between the north urban limits of Los Angeles-Long Beach and Route 138.

Route 4, between the east urban limits of Antioch-Pittsburg and Route 89.

Route 5.

Route 6.

Route 7.
Route 8.
Route 9, between the north urban limits of Santa Cruz and the south urban limits of San Jose.
Route 10, between the east urban limits of San Bernardino-Riverside and the Arizona state line.
SEC. 37. Section 164.11 of the Streets and Highways Code is amended to read:
164.11. For purposes of subdivision (e) of Section 164.3, the eligible interregional and intercounty routes include all of the following:
Route 12.
Route 14.
Route 15.
Route 16, between the east urban limits of Sacramento and Route 49.
Route 17, between the north urban limits of Santa Cruz and the south urban limits of San Jose.
Route 18, between the north urban limits of San Bernardino-Riverside and Route 138.
Route 20.
Route 25, between Route 146 and Route 101 in San Benito County.
Route 28.
Route 29.
SEC. 38. Section 164.12 of the Streets and Highways Code is amended to read:
164.12. For purposes of subdivision (e) of Section 164.3, the eligible interregional and intercounty routes include all of the following:
Route 36, between Route 5 and Route 395.
Route 37, between the east urban limits of San Francisco-Oakland near Novato and the west urban limits of San Francisco-Oakland near Vallejo.
Route 38, between the east urban limits of San Bernardino-Riverside and Route 18 west of Big Bear Lake.
Route 40.
Route 41, between Route 1 and Yosemite National Park.
Route 44, between the east urban limits of Redding and Route 36.
Route 46, between Route 1 and Route 99.
Route 49, between Route 41 and Route 89.
SEC. 39. Section 164.13 of the Streets and Highways Code is amended to read:
164.13. For purposes of subdivision (e) of Section 164.3, the eligible interregional and intercounty routes include all of the following:
Route 50.
Route 53.
Route 58, between Route 5 and Route 15.

Route 62.

Route 63, between the north urban limits of Visalia and Route 180.

Route 65, between the north urban limits of Bakersfield and Route 198 near Exeter, and between Route 80 and Route 99 near Yuba City.

Route 68.

SEC. 40. Section 164.14 of the Streets and Highways Code is amended to read:

164.14. For purposes of subdivision (e) of Section 164.3, the eligible interregional and intercounty routes include all of the following:

Route 70, between Route 99 north of Sacramento and Route 395.

Route 74.

Route 78.

Route 79, between Route 8 and Route 10.

Route 80.

Route 86, between Route 111 in Brawley and Route 10.

Route 88.

Route 89.

SEC. 41. Section 164.15 of the Streets and Highways Code is amended to read:

164.15. For purposes of subdivision (e) of Section 164.3, the eligible interregional and intercounty routes include all of the following:

Route 94, except within the urban limits of the County of San Diego.

Route 95, between Route 10 and the Nevada state line.

Route 97.

Route 98, between Route 111 and Route 7.

Route 99, with routing to be determined via Route 70 or via Route 99 between Route 70 north of Sacramento and Route 149 north of Oroville.

Route 101.

Route 108, between Route 120 at Yosemite Junction and Route 395.

Route 111, between the Mexico border near Calexico and Route 10 near Whitewater.

Route 113, between Route 80 and Route 5.

Route 116, between Route 1 and Route 12.

SEC. 42. Section 164.16 of the Streets and Highways Code is amended to read:

164.16. For purposes of subdivision (e) of Section 164.3, the eligible interregional and intercounty routes include all of the following:

Route 120, between Route 5 and Route 395.

Route 126, between the east urban limits of Oxnard-Ventura-Thousand Oaks and Route 5.

Route 127.

Route 128.

Route 129, between Route 1 and Route 101.

Route 132, west of Route 99.
Route 138, between Route 5 and Route 18.
Route 139, between Route 299 and the Oregon state line.
Route 188.

SEC. 43. Section 253.1 of the Streets and Highways Code is amended to read:

253.1. The California freeway and expressway system shall include:

Routes 5, 6, 8, 10, 14, 15, 18, 24, 28, 30, 32, 34, 37, 40, 44, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 63, 65, 67, 68, 70, 71, 73, 74, 78, 80, 81, 83, 85, 87, 88, 89, 90, 93, 97, 100, 102, 103, 105, 107, 108, 118, 121, 122, 124, 125, 126, 134, 136, 139, 140, 145, 148, 149, 154, 156, 161, 163, 164, 179, 181, 183, 184, 199, 205, 210, 215, 217, 221, 223, 230, 232, 234, 235, 237, 238, 239, 241, 242, 247, 249, 251, 257, 258, 259, 261, 280, 330, 371, 380, 405, 505, 580, 605, 680, 710, 780, 805, 880, and 980 in their entirety.

SEC. 44. Section 253.7 of the Streets and Highways Code is amended to read:

253.7. The California freeway and expressway system shall also include:

Route 133 from Route 73 to Route 241.
Route 137 from Route 99 near Tulare to Route 65 near Lindsay.
Route 138 from Route 5 near Gorman to Route 15 near Cajon Pass.
Route 142 from Route 71 near Chino to Route 30 near Upland.
Route 152 from Route 101 to Route 65 near Sharon via Pacheco Pass.
Route 160 from:
(a) Route 4 near Antioch to Route 12 near Rio Vista.
(b) Sacramento to Route 51.
Route 166 from:
(a) Route 101 near Santa Maria to Route 33 in Cuyama Valley.
(b) Route 33 near Maricopa to Route 5.
Route 168 from Fresno to Huntington Lake.
Route 170 from:
(a) Los Angeles International Airport to Route 90.
(b) Route 101 near Riverside Drive to Route 5 near Tujunga Wash.
Route 178 from:
(a) Bakersfield to Route 14 near Freeman.
(b) Route 14 near Freeman to the vicinity of the San Bernardino county line.
Route 180 from:
(a) Route 25 near Paicines to Route 5.
(b) Route 5 to Route 99 passing near Mendota.
(c) Route 99 near Fresno to General Grant Grove section of Kings Canyon National Park.
Route 190 from Route 136 near Keeler to Route 127 near Death Valley Junction.
Route 193 from Route 65 near Lincoln to Route 80 near Newcastle.

Route 198 from Route 5 near Oilfields to the Sequoia National Park line.

SEC. 45. Section 318 of the Streets and Highways Code is amended to read:

318. Route 18 is from:

(a) Route 10 near San Bernardino to Route 30.

(b) Route 30 near San Bernardino to Route 15 in Victorville via Big Bear Lake.

(c) Route 15 near Victorville to Route 138 near Pearblossom.

SEC. 46. Section 411 of the Streets and Highways Code is amended to read:

411. Route 111 is from:

(a) The international border south of Calexico to Route 78 near Brawley, passing east of Heber.

(b) Route 78 near Brawley to Route 86 via the north shore of the Salton Sea.

(c) Route 10 near Indio to the southeast city limit of Rancho Mirage.

(d) West city limits of Cathedral City to Route 10 near Whitewater, passing near Palm Desert.

SEC. 47. Section 433 of the Streets and Highways Code is amended to read:

433. Route 133 is from Route 1 near Laguna Beach to Route 241.

SEC. 48. Section 524 of the Streets and Highways Code is repealed.

SEC. 49. Section 531 of the Streets and Highways Code is repealed.

SEC. 50. Section 541 of the Streets and Highways Code is amended to read:

541. Route 241 is from Route 5 south of San Clemente to Route 91 in the City of Anaheim.

SEC. 51. Section 561 of the Streets and Highways Code is amended to read:

561. Route 261 is from Walnut Avenue in the City of Irvine to Route 241.

SEC. 52. Section 575 of the Streets and Highways Code is repealed.

SEC. 53. Section 2557 of the Streets and Highways Code is amended to read:

2557. (a) Except as provided in subdivisions (c) and (d), the moneys received by each authority pursuant to subdivision (b) of Section 9250.10 of the Vehicle Code shall be used for the implementation, maintenance, and operation of a motorist aid system of call boxes, including the lease or lease-purchase of facilities and equipment for the system, on the portions of the California Freeway and Expressway System and a county expressway system, and, in counties with a population of over 6,000,000 persons, the unincorporated county roads in that county, and on state highway

routes that connect segments of these systems, which are located within the county in which the authority is established and over which the Department of the California Highway Patrol or an agency designated by that department has law enforcement responsibility. The Department of Transportation and the Department of the California Highway Patrol shall each review and approve plans for implementation of a motorist aid system proposed for any state highway route and shall be reimbursed by the service authority for all costs incurred.

(b) An authority or any other public entity may construct and maintain, and lease or lease-purchase on terms and conditions it deems appropriate, the facilities of a motorist aid system or it may contract with a private person or entity to do so.

(c) If leases or lease-purchase agreements are entered into pursuant to subdivision (a), or if revenue bonds are issued and sold pursuant to Section 2558, the moneys received by each authority pursuant to subdivision (b) of Section 9250.10 of the Vehicle Code shall be used to the extent necessary to make lease payments or to pay the principal of, and interest on, the amount of bonded indebtedness outstanding, as the case may be. Facilities and equipment acquired through the expenditure of proceeds from the sale of those bonds shall have a useful life at least equal to the term of the bonds.

(d) (1) Any money received by an authority pursuant to subdivision (b) of Section 9250.10 of the Vehicle Code which exceeds the amount needed for full implementation and ongoing costs to maintain and operate the motorist aid system of call boxes, installed pursuant to subdivision (a), may be used for purposes of paragraph (2) and for additional motorist aid services or support, including, but not limited to, the following safety-related projects:

(A) Changeable message signs.

(B) Lighting for call boxes.

(C) Support for traffic operations centers.

(D) Contracting for removal of disabled vehicles from the traveled portion of the right-of-way.

(2) Any amendment to an existing plan for a motorist aid system adopted by an authority for any state highway route shall, prior to implementation, be submitted to the Department of Transportation and the Department of the California Highway Patrol for review and approval and shall not be implemented until so reviewed and approved. The authority shall reimburse each department for the costs of that review.

(e) A motorist aid system constructed, maintained, or operated pursuant to this section shall meet the applicable standards of Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto.

SEC. 54. Section 22 of the Vehicle Code is amended to read:

22. Whenever notice is required to be given under this code by a department or any division, officer, employee, or agent, the notice

shall be given either by personal delivery to the person to be notified, by certified mail, return receipt requested, or by mailing the notice, postage prepaid, addressed to the person at his or her address as shown by the records of the department.

SEC. 55. Section 24 of the Vehicle Code is amended to read:

24. Proof of the giving of notice may be made by the certificate of any officer, employee, or agent of the Department of Motor Vehicles and the Department of the California Highway Patrol or of any peace officer, or by an affidavit of any person over 18 years of age, naming the person to whom the notice was given and specifying the time, place, and manner of the giving of the notice.

SEC. 56. Section 2421.5 of the Vehicle Code is amended to read:

2421.5. When any Service Authority for Freeway Emergencies has imposed additional fees on vehicles pursuant to Section 2555 of the Streets and Highways Code, the department shall answer calls and provide central dispatching services for the system on the portions of the California Freeway and Expressway System, and, in counties with a population of over 6,000,000 persons, the unincorporated county roads of that county, and on state highway routes that connect segments of the system, which are located within the county and over which the Department of the California Highway Patrol has law enforcement responsibility. The department shall determine and authorize the service providers eligible to participate in the system. The service authority shall reimburse the department for all costs incurred under this section.

SEC. 56.5. Section 4000.7 of the Vehicle Code is amended to read:

4000.7. (a) For purposes of subdivision (a) of Section 4000.3, for any vehicle which is registered for the first time in this state on or after January 1, 1994, the first certificate of compliance shall be required upon the second renewal of its registration.

(b) (1) Commencing not later than October 1, 1996, at the time of application and payment for the second renewal of the registration of a motor vehicle that was first sold as new in California on or after January 1, 1994, and which is subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, the department shall solicit an additional payment which, at the option of the applicant, may be made to the department. The Department of Consumer Affairs shall determine the amount of the additional payment, but the amount shall not exceed fifty dollars ($50). In soliciting the additional payment in the application for the second renewal, the department shall include a brief summary of the air quality benefits being achieved by the inspection and maintenance and high-polluter repair or removal programs. The Legislature hereby finds and declares that the payment is in the nature of a donation for purposes of the high-polluter repair or removal program established pursuant to Article 9 (commencing with Section 44090), and the accelerated light-duty vehicle retirement program

established pursuant to Article 10 (commencing with Section 44100) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code.

(2) (A) On a monthly basis, the department shall transmit all payments received pursuant to paragraph (1), including any accrued interest, to the Treasurer for deposit in the High Polluter Repair or Removal Account created pursuant to subdivision (a) of Section 44091 of the Health and Safety Code, for expenditure, upon appropriation by the Legislature, by the Department of Consumer Affairs pursuant to Article 9 (commencing with Section 44090) and Article 10 (commencing with Section 44100) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code.

(B) The department and the Department of Consumer Affairs, by interagency agreement, shall establish a procedure for the Department of Consumer Affairs to reimburse the department for its reasonable costs incurred in collecting the payments received pursuant to paragraph (1).

(3) (A) Upon receipt of a payment pursuant to paragraph (1), the department shall mark the record of the subject vehicle with an exemption from the requirements of subdivision (a) of Section 4000.3. The exemption shall be valid for the first biennial inspection period, and shall have the same force and effect as a certificate of compliance issued in accordance with Section 44015 of the Health and Safety Code. The exemption shall be void if the title to, or any interest in, the vehicle is transferred pursuant to Section 5600.

(B) The department shall collect a fee at the time of the payment pursuant to paragraph (1) for marking the record with an exemption which is equal to the fee that is charged for the issuance of a certificate of compliance. All fee revenue received pursuant to this subparagraph shall be deposited in the Vehicle Inspection and Repair Fund and be available for purposes of administering and enforcing the vehicle inspection and maintenance program.

(4) Notwithstanding paragraph (1) of subdivision (b), the provisions of Section 4000.6 in existence on December 31, 1995, authorizing an optional additional payment at the time of application for the initial registration for a new motor vehicle shall continue in effect until October 1, 1996.

SEC. 57. Section 4021 of the Vehicle Code is amended to read:

4021. Any vehicle that is designed or altered for, and used exclusively for, the refueling of aircraft at a public airport is exempt from registration, if the vehicle is operated upon a highway under the control of a local authority for a continuous distance not exceeding one-half mile each way to and from a bulk fuel storage facility.

SEC. 58. Section 5064 of the Vehicle Code is amended to read:

5064. (a) The department, in consultation with the Yosemite Foundation, shall design and make available for issuance pursuant to this article special environmental design license plates bearing, notwithstanding Section 5060, a full-plate graphic design depicting a significant feature or quality of Yosemite National Park. Any person

described in Section 5101, upon payment of the additional fees set forth in subdivision (b), may apply for and be issued a set of special environmental design license plates. Notwithstanding subdivision (a) of Section 5060, the plates may be issued in a combination of numbers or letters, or both, requested by the owner or lessee of the vehicle.

(b) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance, renewal, or transfer of the special environmental design license plates authorized pursuant to this section:

(1) For the original issuance of the plates, fifty dollars ($50).

(2) For a renewal of registration with the plates, forty dollars ($40).

(3) For transfer of the plates to another vehicle, fifteen dollars ($15).

(4) For each substitute replacement plate, thirty-five dollars ($35).

(5) For the conversion of an existing environmental license plate to the special environmental design license plate authorized pursuant to this section, sixty-five dollars ($65).

(c) After deducting its administrative costs under this section, the department shall deposit the additional revenue derived from the issuance, renewal, transfer, and substitution of special environmental design license plates as follows:

(1) One-half in the Yosemite Foundation Account, which is hereby created in the California Environmental License Plate Fund. Upon appropriation by the Legislature, the money in the account shall be allocated by the Controller to the Yosemite Foundation or its successor for expenditure for the exclusive trust purposes of preservation and restoration projects in Yosemite National Park.

(2) One-half in the California Environmental License Plate Fund.

(d) The Yosemite Foundation shall report to the Legislature on or before June 30 of each year on its use and expenditure of the money in the Yosemite Foundation Account, beginning one year after the initial issuance of the special interest license plates authorized by this section.

SEC. 59. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, the following shall apply:

(a) Any conviction of failure to stop in the event of an accident in violation of Section 20001 or 20002 shall be given a value of two points.

(b) Any conviction of a violation of Section 23152 or 23153 shall be given a value of two points.

(c) Any conviction of reckless driving shall be given a value of two points.

(d) (1) Any conviction of a violation of subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2 or 2800.3, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) of

Section 23109, subdivision (c) of Section 23109, or Section 31602 of this code, shall be given a value of two points.

(2) Any conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) Except as provided in subdivision (g), any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(f) Any accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(g) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) Any conviction of a violation of subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A violation of Section 23136 shall not result in a violation point count.

(h) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

(i) Any conviction of a violation of Section 14601, 14601.1, 14601.2, 14601.3, or 14601.5 shall be given a value of two points.

(j) Any conviction of a violation of Section 27360 within a 37-month period shall be given a value of one point.

SEC. 60. Section 12815 of the Vehicle Code is amended to read:

12815. (a) In the event a driver's license issued under this code is lost, destroyed or mutilated, or a new name is acquired, the person to whom it was issued shall obtain a duplicate upon furnishing to the department (a) satisfactory proof of such loss, destruction, or mutilation and (b) if the licensee is a minor, evidence of permission to obtain a duplicate secured from the parents, guardian or person having custody of such minor. Any person who loses a driver's license and who, after obtaining a duplicate, finds the original license shall immediately destroy the original license.

(b) A person in possession of a valid driver's license who has been informed either by the department or by a law enforcement agency that the document is mutilated shall surrender the license to the department not later than 10 days after that notification.

(c) For purposes of this section, a mutilated license is one that has been damaged sufficiently to render any or all of the elements of identity set forth in Sections 12800.5 and 12811 unreadable or unidentifiable through visual, mechanical, or electronic means.

SEC. 61. Section 13003 of the Vehicle Code is amended to read:

13003. (a) In the event an identification card issued under this code is lost, destroyed, mutilated, or a new name is acquired, the person to whom it was issued shall make application for an original identification card as specified in Section 13000. The fee provided in Section 14902 shall be paid to the department upon application for

the card. Every identification card issued pursuant to this section shall expire as provided in Section 13002 and shall be deemed an original identification card for that purpose.

(b) A person in possession of a valid identification card who has been informed either by the department or by a law enforcement agency that the document is mutilated shall surrender the identification card to the department not later than 10 days after that notification.

(c) For purposes of this section a mutilated identification card is one that has been damaged sufficiently to render any or all of the elements of identity set forth in Sections 13005 and 13005.5 unreadable or unidentifiable through visual, mechanical, or electronic means.

SEC. 62. Section 14908 of the Vehicle Code is amended to read:

14908. If a person fails to surrender his or her license to the department as required by Section 13551.1, the department shall set and charge a license reinstatement penalty fee, as determined by the department, in addition to any fees that may be required by Section 14904, 14905, or 14906, as the case may be. The fee shall be waived if the person returns to the department an acknowledgment of the license suspension or revocation along with a statement that the license has been previously surrendered to a court or peace officer, or that provides any other reasonable explanation.

SEC. 63. Section 16000 of the Vehicle Code is amended to read:

16000. (a) The driver of every motor vehicle who is in any manner involved in an accident originating from the operation of a motor vehicle on any street or highway or any reportable off-highway accident defined in Section 16000.1 which has resulted in damage to the property of any one person in excess of five hundred dollars ($500) or in bodily injury or in the death of any person shall, within 10 days after the accident, report the accident, either personally or through an insurance agent, broker, or legal representative, on a form approved by the department to the office of the department at Sacramento, subject to the provisions of this chapter. The driver shall identify on the form, by name and current residence address, if available, any person involved in the accident complaining of bodily injury.

(b) A report is not required pursuant to subdivision (a) if the motor vehicle involved in the accident was owned or leased by, or under the direction of, the United States, this state, another state, or a local agency.

(c) If none of the parties involved in an accident has reported that accident to the department within one year following the date of the accident, the department is not required to file the report, and the driver's license suspension requirements of Section 16004 or 16070 do not apply.

SEC. 64. Section 16056 of the Vehicle Code is amended to read:

16056. (a) No policy or bond shall be effective under Section 16054 unless issued by an insurance company or surety company authorized to do business in this state, except as provided in subdivision (b) of this section, nor unless the policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, to a limit of not less than thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident.

(b) No policy or bond shall be effective under Section 16054 with respect to any vehicle which was not registered in this state or was a vehicle which was registered elsewhere than in this state at the effective date of the policy or bond or the most recent renewal thereof, unless the insurance company or surety company issuing the policy or bond is authorized to do business in this state, or if the company is not authorized to do business in this state, unless it executes a power of attorney authorizing the department to accept service on its behalf of notice or process in any action upon the policy or bond arising out of an accident mentioned in subdivision (a).

(c) Any nonresident driver whose driving privilege has been suspended or revoked based upon an action that requires proof of financial responsibility may, in lieu of providing a certificate of insurance from a company authorized to do business in California, provide a written certificate of proof of financial responsibility that is satisfactory to the department, covers the operation of a vehicle in this state, meets the liability requirements of this section, and is from a company that is authorized to do business in that person's state of residence.

SEC. 65. Section 16056 of the Vehicle Code is amended to read:

16056. (a) No policy shall be effective under Section 16054 unless issued by an insurance company authorized to do business in this state, except as provided in subdivision (b).

(b) No policy shall be effective under Section 16054 with respect to any vehicle which was not registered in this state or was a vehicle which was registered elsewhere than in this state at the effective date of the policy or the most recent renewal thereof, unless the insurance company issuing the policy is authorized to do business in this state, or if the company is not authorized to do business in this state, unless it executes a power of attorney authorizing the department to accept service on its behalf of notice or process in any action upon the policy arising out of an accident mentioned in subdivision (a).

(c) Any nonresident driver whose driving privilege has been suspended or revoked based upon an action that requires proof of financial responsibility may, in lieu of providing a certificate of

insurance from a company authorized to do business in California, provide a written certificate of proof of financial responsibility that is satisfactory to the department, covers the operation of a vehicle in this state, meets the liability requirements of this section, and is from a company that is authorized to do business in that person's state of residence.

SEC. 66. Section 16431 of the Vehicle Code is amended to read:

16431. (a) Proof of financial responsibility may be given by the written certificate or certificates of any insurance carrier duly authorized to do business within the state, that it has issued to or for the benefit of the person named therein a motor vehicle liability policy as defined in Section 16450, an automobile liability policy as defined in Section 16054, or any other liability policy issued for vehicles with less than four wheels that meets the requirements of Section 16056, which, at the date of the certificate or certificates is in full force and effect. Except as provided in subdivision (b), the certificate or certificates issued under any liability policy set forth in this section shall be accepted by the department and satisfy the requirements of proof of financial responsibility of this chapter. Nothing in this chapter requires that an insurance carrier certify that there is coverage broader than that provided by the actual policy issued by the carrier.

(b) The department shall require that a person whose driver's license has been revoked, suspended, or restricted pursuant to Section 13350, 13351, 13352, 13353, 13353.2, 13353.3, 13353.6, 13353.7, 16370, or 16370.5 provide, as proof of financial responsibility, a certificate or certificates which covers all motor vehicles registered to the person before reinstatement of his or her driver's license.

(c) Subdivision (b) does not apply to vehicles in storage if the current license plates and registration cards are surrendered to the department in Sacramento.

(d) (1) A resident of another state may provide proof of financial responsibility when required to do so under this code from a company authorized to do business in that person's state of residence, if that proof is satisfactory to the department, covers the operation of a vehicle in this state, and meets the minimum coverage limit requirements specified in Section 16056.

(2) If the person specified in paragraph (1) becomes a resident of this state during the period that the person is required to maintain proof of financial responsibility with the department, the department shall not issue or return a driver's license to that person until the person files a written certificate or certificates, as authorized under subdivision (a), that meets the minimum coverage limit requirements specified in Section 16056 and covers the period during which the person is required to maintain proof of financial responsibility.

SEC. 66.1. Section 16431 of the Vehicle Code is amended to read:

16431. (a) Proof of financial responsibility may be given by the written certificate or certificates of any insurance carrier duly authorized to do business within the state, that it has issued to or for the benefit of the person named therein a policy providing personal injury protection benefits, and liability coverage where applicable, in accordance with Chapter 6 (commencing with Section 12000) of Part 3 of Division 2 of the Insurance Code, which, at the date of the certificate or certificates is in full force and effect. Except as provided in subdivision (b), the certificate or certificates issued under any liability policy set forth in this section shall be accepted by the department and satisfy the requirements of proof of financial responsibility of this chapter. Nothing in this chapter requires that an insurance carrier certify that there is coverage broader than that provided by the actual policy issued by the carrier.

(b) The department shall require that a person whose driver's license has been revoked, suspended, or restricted pursuant to Section 13350, 13351, 13352, 13353, 13353.2, 13353.3, 13353.6, 13353.7, 16370, or 16370.5 provide, as proof of financial responsibility, a certificate or certificates which covers all motor vehicles registered to the person before reinstatement of his or her driver's license.

(c) Subdivision (b) does not apply to vehicles in storage if the current license plates and registration cards are surrendered to the department in Sacramento.

(d) (1) A resident of another state may provide proof of financial responsibility when required to do so under this code from a company authorized to do business in that person's state of residence, if that proof is satisfactory to the department, covers the operation of a vehicle in this state, and meets the minimum coverage limit requirements specified in Section 16056.

(2) If the person specified in paragraph (1) becomes a resident of this state during the period that the person is required to maintain proof of financial responsibility with the department, the department shall not issue or return a driver's license to that person until the person files a written certificate or certificates, as authorized under subdivision (a), that meets the minimum coverage limit requirements specified in Section 16056 and covers the period during which the person is required to maintain proof of financial responsibility.

SEC. 67. Section 21655.8 of the Vehicle Code is amended to read:

21655.8. (a) Except as required under subdivision (b), when exclusive or preferential use lanes for high-occupancy vehicles are established pursuant to Section 21655.5 and double parallel solid lines are in place to the right thereof, no person driving a vehicle may cross over these double lines to enter into or exit from the exclusive or preferential use lanes, and entrance or exit may be made only in areas designated for these purposes or where a single broken line is in place to the right of the exclusive or preferential use lanes.

(b) Upon the approach of an authorized emergency vehicle displaying a red light or siren, as specified in Section 21806, a person driving a vehicle in an exclusive or preferential use lane shall exit that lane immediately upon determining that the exit can be accomplished with reasonable safety.

(c) Raised pavement markers may be used to simulate painted lines described in this section.

SEC. 68. Section 21806 of the Vehicle Code is amended to read:

21806. Upon the immediate approach of an authorized emergency vehicle which is sounding a siren and which has at least one lighted lamp exhibiting red light that is visible, under normal atmospheric conditions, from a distance of 1,000 feet to the front of the vehicle, the surrounding traffic shall, except as otherwise directed by a traffic officer, do the following:

(a) (1) Except as required under paragraph (2), the driver of every other vehicle shall yield the right-of-way and shall immediately drive to the right-hand edge or curb of the highway, clear of any intersection, and thereupon shall stop and remain stopped until the authorized emergency vehicle has passed.

(2) A person driving a vehicle in an exclusive or preferential use lane shall exit that lane immediately upon determining that the exit can be accomplished with reasonable safety.

(b) The operator of every street car shall immediately stop the street car, clear of any intersection, and remain stopped until the authorized emergency vehicle has passed.

(c) All pedestrians upon the highway shall proceed to the nearest curb or place of safety and remain there until the authorized emergency vehicle has passed.

SEC. 69. Section 22651 of the Vehicle Code is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known to have been issued five or more notices of parking violation, to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

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

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

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

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

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

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

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

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

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

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

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

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's

license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

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

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

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

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

SEC. 69.1. Section 22651 of the Vehicle Code is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a state agency, city, or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations

may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

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

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

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

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

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

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

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

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

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

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

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

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's

license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

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

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

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

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

SEC. 69.2. Section 22651 of the Vehicle Code is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known to have been issued five or more notices of parking violation, to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing

satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

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

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

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

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

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

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

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

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

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

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

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

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a

common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

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

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

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

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

(u) When any motor vehicle was used by a person who was engaged in a motor vehicle speed contest, as described in subdivision (a) of Section 23109, and the person was arrested and taken into custody for that offense by a peace officer.

SEC. 69.3. Section 22651 of the Vehicle Code is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a state agency, city, or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations, to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations

may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

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

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

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

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

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

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

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

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

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

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

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

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's

license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

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

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

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

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

(u) When any motor vehicle was used by a person who was engaged in a motor vehicle speed contest, as described in subdivision (a) of Section 23109, and the person was arrested and taken into custody for that offense by a peace officer.

SEC. 70. Section 23157 of the Vehicle Code, as amended by Section 17 of Chapter 938 of the Statutes of 1994, is amended to read:

23157. (a) (1) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood, and to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153. The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153. The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (A) the suspension of the person's privilege to operate a motor vehicle for a period of one year, (B) the revocation of the person's privilege

to operate a motor vehicle for a period of two years if the refusal occurs within seven years of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code which resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 for an offense which occurred on a separate occasion, or (C) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353, 13353.1, or 13353.2 for offenses which occurred on separate occasions, or if there is any combination of those convictions or administrative suspensions or revocations.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall submit to the person's choice of the remaining tests or test, and the officer shall advise the person that the person has that choice.

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

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

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, and, because of the need for medical treatment, the person is first transported to

a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests which are available at the facility to which that person has been transported. In that case, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

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

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

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

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

(d) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(e) If the person, who has been arrested for a violation of Section 23140, 23152, or 23153, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. The notice shall be on a form provided by the department.

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

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

(h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140, 23152, or 23153 is a field sobriety test and may be used by an officer as a further investigative tool.

(i) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

SEC. 71. Section 23190 of the Vehicle Code is amended to read:

23190. (a) If any person is convicted of a violation of Section 23153 and the offense occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars ($1,015) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352.

(b) If any person is convicted of a violation of Section 23153, and the act or neglect proximately causes great bodily injury, as defined in Section 12022.7 of the Penal Code, to any person other than the driver, and the offense occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars ($1,015) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of

Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352.

(c) If any person is convicted under subdivision (b), and the offense for which the person is convicted occurred within seven years of four or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, that resulted in convictions, that person shall, in addition and consecutive to the sentences imposed under subdivision (b), be punished by an additional term of imprisonment in the state prison for three years.

The enhancement allegation provided in the subdivision shall be pleaded and proved as provided by law.

(d) Any person convicted of Section 23153 punishable under this section shall be designated as an habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

(e) Any person confined in state prison under this section shall be ordered by the court to participate in an alcohol or drug program, or both, that is available at the prison during the person's confinement. Completion of an alcohol or drug program under this section does not meet the program completion requirement of paragraph (6) of subdivision (a) of Section 13352, unless the drug or alcohol program is licensed under Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or is a program specified in Section 8001 of the Penal Code.

SEC. 72. Section 23250 of the Vehicle Code is amended to read:

23250. All of the provisions of this code not inconsistent with the provisions of this chapter shall be applicable to vehicular crossings and toll highways. This chapter shall control over any provision of this code inconsistent with this chapter.

SEC. 73. Section 23302 of the Vehicle Code is amended to read:

23302. (a) It is unlawful for any person to refuse to pay tolls or other charges on any vehicular crossing or toll highway. It is prima facie evidence of a violation of this section for any person to enter upon any vehicular crossing without either lawful money of the United States in the person's immediate possession in an amount sufficient to pay the prescribed tolls or other charges due from that person or transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls.

(b) For vehicular crossings and toll highways that uses electronic toll collection as the only method of paying tolls or other charges, it is prima facie evidence of a violation of this section for any person to enter the vehicular crossing or toll highway without a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls. If a transponder or other electronic toll payment

device is used to pay tolls or other charges due, the device shall be located in, or on the vehicle in a location so as to be visible for the purpose of enforcement at all times when the vehicle is located on the vehicular crossing or toll highway. Where required by the operator of a vehicular crossing or toll highway, this requirement applies even if the operator offers free travel or nontoll accounts to certain classes of users.

SEC. 74. Section 25258 of the Vehicle Code is amended to read:

25258. (a) An authorized emergency vehicle operating under the conditions specified in Section 21055 may display a flashing white light from a gaseous discharge lamp designed and used for the purpose of controlling official traffic control signals.

(b) An authorized emergency vehicle used by a peace officer, as defined in Section 830.1 of, subdivision (a), (b), (c), (d), (e), (f), (g), (h), or (j) of Section 830.2 of, subdivision (b) of Section 830.31 of, subdivision (a) or (b) of Section 830.32 of, Section 830.33 of, subdivision (a) of Section 830.36 of, subdivision (a) of Section 830.4 of, or Section 830.6 of, the Penal Code, in the performance of the peace officer's duties, may, in addition, display a steady or flashing blue warning light visible from the front, sides, or rear of the vehicle.

SEC. 75. Section 25258.1 of the Vehicle Code is repealed.

SEC. 76. Section 25279 of the Vehicle Code is amended to read:

25279. (a) Vehicles owned and operated by private security agencies and utilized exclusively on privately owned and maintained roads to which this code is made applicable by local ordinance or resolution, may display flashing amber warning lights to the front, sides, or rear, while being operated in response to emergency calls for the immediate preservation of life or property.

(b) (1) Vehicles owned by a private security agency and operated by personnel who are registered with the Department of Consumer Affairs under Article 3 (commencing with Section 7582) of Chapter 11.5 of Division 3 of the Business and Professions Code may be equipped with a flashing amber warning light system while the vehicle is operated on a highway, if the vehicle is in compliance with Section 27605 and is distinctively marked with the words "PRIVATE SECURITY" or "SECURITY PATROL" on the rear and both sides of the vehicle in a size that is legible from a distance of not less than 50 feet.

(2) The flashing amber warning light system authorized under paragraph (1) shall not be activated while the vehicle is on the highway, unless otherwise directed by a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(c) A peace officer may order that the flashing amber warning light system of a vehicle that is found to be in violation of this section be immediately removed at the place of business of the vehicle's owner or a garage.

(d) A flashing amber warning light system shall not be installed on a vehicle that has been found to be in violation of this section, unless written authorization is obtained from the Commissioner of the California Highway Patrol.

SEC. 77. Section 26708 of the Vehicle Code is amended to read:

26708. (a) (1) No person shall drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied upon the windshield or side or rear windows.

(2) No person shall drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied in or upon the vehicle which obstructs or reduces the driver's clear view through the windshield or side windows.

(3) This subdivision applies to a person driving a motor vehicle with the driver's clear vision through the windshield, or side or rear windows, obstructed by snow or ice.

(b) This section does not apply to:

(1) Rearview mirrors.

(2) Adjustable nontransparent sunvisors which are mounted forward of the side windows and are not attached to the glass.

(3) Signs, stickers, or other materials which are displayed in a 7-inch square in the lower corner of the windshield farthest removed from the driver, signs, stickers, or other materials which are displayed in a 7-inch square in the lower corner of the rear window farthest removed from the driver, or signs, stickers, or other materials which are displayed in a 5-inch square in the lower corner of the windshield nearest the driver.

(4) Side windows which are to the rear of the driver.

(5) Direction, destination, or termini signs upon a passenger common carrier motor vehicle or a schoolbus, if those signs do not interfere with the driver's clear view of approaching traffic.

(6) Rear window wiper motor.

(7) Rear trunk lid handle or hinges.

(8) The rear window or windows, when the motor vehicle is equipped with outside mirrors on both the left- and right-hand sides of the vehicle that are so located as to reflect to the driver a view of the highway through each mirror for a distance of at least 200 feet to the rear of the vehicle.

(9) A clear, transparent lens affixed to the side window opposite the driver on a vehicle greater than 80 inches in width and which occupies an area not exceeding 50 square inches of the lowest corner toward the rear of that window and which provides the driver with a wide-angle view through the lens.

(10) Sun screening devices meeting the requirements of Section 26708.2 installed on the side windows on either side of the vehicle's front seat, if the driver or a passenger in the front seat has in his or her possession a letter or other document signed by a licensed physician and surgeon certifying that the person must be shaded from the sun due to a medical condition, or has in his or her possession

a letter or other document signed by a licensed optometrist certifying that the person must be shaded from the sun due to a visual condition. The devices authorized by this paragraph shall not be used during darkness.

(11) An electronic communication device affixed to the center uppermost portion of the interior of a windshield within an area that is not greater than 5 inches square, if the device provides either of the following:

(A) The capability for enforcement facilities of the Department of the California Highway Patrol to communicate with a vehicle equipped with the device.

(B) The capability for electronic toll and traffic management on public or private roads or facilities.

(c) Notwithstanding subdivision (a), transparent material may be installed, affixed, or applied to the topmost portion of the windshield if:

(1) The bottom edge of the material is at least 29 inches above the undepressed driver's seat when measured from a point 5 inches in front of the bottom of the backrest with the driver's seat in its rearmost and lowermost position with the vehicle on a level surface.

(2) The material is not red or amber in color.

(3) There is no opaque lettering on the material and any other lettering does not affect primary colors or distort vision through the windshield.

(4) The material does not reflect sunlight or headlight glare into the eyes of occupants of oncoming or following vehicles to any greater extent than the windshield without the material.

SEC. 78. Section 27315 of the Vehicle Code is amended to read:

27315. (a) The Legislature finds that a mandatory seatbelt law will contribute to reducing highway deaths and injuries by encouraging greater usage of existing manual seatbelts, that automatic crash protection systems which require no action by vehicle occupants offer the best hope of reducing deaths and injuries, and that encouraging the use of manual safety belts is only a partial remedy for addressing this major cause of death and injury. The Legislature declares that the enactment of this section is intended to be compatible with support for federal safety standards requiring automatic crash protection systems and should not be used in any manner to rescind federal requirements for installation of automatic restraints in new cars.

(b) This section shall be known and may be cited as the Private Passenger Motor Vehicle Safety Act.

(c) As used in this section, "private passenger motor vehicle" means any passenger vehicle and any motortruck of less than 6,001 pounds unladen weight, but "private passenger motor vehicle" does not include a motorcycle.

(d) (1) No person shall operate a private passenger motor vehicle on a highway unless that person and all passengers 16 years of age or

over are properly restrained by a safety belt. This paragraph does not apply to the operator of a taxicab, as defined in Section 27908, when the taxicab is driven on a city street. The safety belt requirement established by this paragraph is the minimum safety standard applicable to employees being transported in a private passenger motor vehicle. This paragraph does not preempt any more stringent or restrictive standards imposed by the Labor Code or any other state or federal regulation regarding the transportation of employees in a private passenger motor vehicle.

(2) The operator of a limousine for hire or the operator of an authorized emergency vehicle, as defined in subdivision (a) of Section 165, shall not operate the limousine for hire or authorized emergency vehicle unless the operator and any passengers four years of age or over and weighing 40 pounds or more, in the front seat are properly restrained by a safety belt.

(3) The operator of a taxicab shall not operate the taxicab unless any passengers four years of age or over and weighing 40 pounds or more, in the front seat are properly restrained by a safety belt.

(e) No person 16 years of age or over shall be a passenger in a private passenger motor vehicle on a highway unless that person is properly restrained by a safety belt.

(f) Every owner of a private passenger motor vehicle, including every owner or operator of a taxicab, as defined in Section 27908, or a limousine for hire, operated on a highway shall maintain safety belts in good working order for the use of occupants of the vehicle. The safety belts shall conform to motor vehicle safety standards established by the United States Department of Transportation. This subdivision does not, however, require installation or maintenance of safety belts where not required by the laws of the United States applicable to the vehicle at the time of its initial sale.

(g) This section does not apply to a passenger or operator with a physically disabling condition or medical condition which would prevent appropriate restraint in a safety belt, if the condition is duly certified by a licensed physician and surgeon or by a licensed chiropractor who shall state the nature of the condition, as well as the reason the restraint is inappropriate. This section also does not apply to a public employee, when in an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165, or to any passenger in any seat behind the front seat of an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165 operated by the public employee, unless required by the agency employing the public employee.

(h) Notwithstanding subdivision (a) of Section 42001, any violation of subdivision (d), (e), or (f) is an infraction punishable by a fine, including all penalty assessments and court costs imposed on the convicted person, of not more than twenty dollars ($20) for a first offense, and a fine, including all penalty assessments and court costs imposed on the convicted person, of not more than fifty dollars ($50)

for each subsequent offense. In lieu of the fine and any penalty assessment or court costs, the court, pursuant to Section 42005, may order that a person convicted of a first offense attend a school for traffic violators or a driving school in which the proper use of safety belts is demonstrated.

(i) For any violation of subdivision (d), (e), or (f), in addition to the fines provided for pursuant to subdivision (h) and the penalty assessments provided for pursuant to Section 1464 of the Penal Code, an additional penalty assessment of two dollars ($2) shall be levied for any first offense, and an additional penalty assessment of five dollars ($5) shall be levied for any subsequent offense.

All moneys collected pursuant to this subdivision shall be utilized in accordance with Section 1464 of the Penal Code.

(j) In any civil action, a violation of subdivision (d), (e), or (f) or information of a violation of subdivision (h) shall not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as a fact without regard to the violation.

(k) If the United States Secretary of Transportation fails to adopt safety standards for manual safety belt systems by September 1, 1989, no private passenger motor vehicle manufactured after that date for sale or sold in this state shall be registered unless it contains a manual safety belt system which meets the performance standards applicable to automatic crash protection devices adopted by the Secretary of Transportation pursuant to Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) as in effect on January 1, 1985.

(*l*) Each private passenger motor vehicle offered for original sale in this state which has been manufactured on or after September 1, 1989, shall comply with the automatic restraint requirements of Section S4.1.2.1 of Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208), as published in Volume 49 of the Federal Register, No. 138, page 29009. Any automobile manufacturer who sells or delivers a private passenger motor vehicle subject to the requirements of this subdivision, and fails to comply with this subdivision, shall be punished by a fine of not more than five hundred dollars ($500) for each sale or delivery of a noncomplying private passenger motor vehicle.

(m) Compliance with subdivision (k) or (*l*) by a manufacturer shall be made by self-certification in the same manner as self-certification is accomplished under federal law.

(n) This section does not apply to a person actually engaged in delivery of newspapers to customers along the person's route if the person is properly restrained by a safety belt prior to commencing and subsequent to completing delivery on the route.

(o) This section does not apply to a person actually engaged in collection and delivery activities as a rural delivery carrier for the United States Postal Service if the person is properly restrained by a

safety belt prior to stopping at the first box and subsequent to stopping at the last box on the route.

(p) Subdivisions (d), (e), (f), (g), and (h) shall become inoperative immediately upon the date that the United States Secretary of Transportation, or his or her delegate, determines to rescind the portion of the Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) which requires the installation of automatic restraints in new private passenger motor vehicles, except that those subdivisions shall not become inoperative if the secretary's decision to rescind that Standard No. 208 is not based, in any respect, on the enactment or continued operation of those subdivisions.

SEC. 79. Section 27365 of the Vehicle Code is amended to read:

27365. (a) (1) Every car rental agency in California shall inform each of its customers of the provisions of Section 27360 by posting, in a place conspicuous to the public in each established place of business of the agency, a notice not smaller than 15 inches by 20 inches which states the following:

"CALIFORNIA LAW REQUIRES ALL CHILDREN UNDER THE AGE OF 4, REGARDLESS OF WEIGHT, OR WEIGHING LESS THAN 40 POUNDS, REGARDLESS OF AGE, TO BE TRANSPORTED IN A CHILD RESTRAINT SYSTEM. THIS AGENCY IS REQUIRED TO PROVIDE FOR RENTAL A CHILD RESTRAINT SYSTEM IF YOU DO NOT HAVE SUCH A SYSTEM YOURSELF."

(2) The posted notice specified in paragraph (1) is not required if the car rental agency's place of business is located in a hotel which has a business policy prohibiting the posting of signs or notices in any area of the hotel. In that case, a car rental agency shall furnish a written notice to each customer which contains the same information as required for the posted notice.

(b) Every such agency shall have available for, and shall, upon request, provide for rental to, adults traveling with children under the age of four, regardless of weight, or weighing less than 40 pounds, regardless of age, child passenger seat restraint systems meeting applicable federal motor vehicle safety standards on the date of the rental transaction, in good and safe condition, with no missing original parts, and not older than five years.

(c) A violation of this section is an infraction punishable by a fine of one hundred dollars ($100).

SEC. 80. Section 34501.12 of the Vehicle Code is amended to read:

34501.12. (a) Notwithstanding Section 408, as used in this section and Sections 34505.5 and 34505.6, "motor carrier" means the registered owner of any vehicle described in subdivision (a), (b), (e), (f), or (g) of Section 34500, except in the following circumstances:

(1) The registered owner leases the vehicle to another person for a term of more than four months. If the lease is for more than four months, the lessee is the motor carrier.

(2) The registered owner operates the vehicle exclusively under the authority and direction of another person. If the operation is exclusively under the authority and direction of another person, that other person may assume the responsibilities as the motor carrier. If not so assumed, the registered owner is the motor carrier. A person who assumes the motor carrier responsibilities of another pursuant to subdivision (b) shall provide to that other person whose motor carrier responsibility is so assumed, a completed copy of a department form documenting that assumption, stating the period for which responsibility is assumed, and signed by an agent of the assuming person. A legible copy shall be carried in each vehicle or combination of vehicles operated on the highway during the period for which responsibility is assumed. That copy shall be presented upon request by any authorized employee of the department. The original completed departmental form documenting the assumption shall be provided to the department within 30 days of the assumption. If the assumption of responsibility is terminated, the person who had assumed responsibility shall so notify the department in writing within 30 days of the termination.

(b) (1) A motor carrier may combine two or more terminals for purposes of the inspection required by subdivision (d) subject to all of the following conditions:

(A) The carrier identifies to the department, in writing, each terminal proposed to be included in the combination of terminals for purposes of this subdivision prior to an inspection of the designated terminal pursuant to subdivision (d).

(B) The carrier provides the department, prior to the inspection of the designated terminal pursuant to subdivision (d) a written listing of all its vehicles of a type subject to subdivision (a), (b), (e), (f), or (g) of Section 34500 which are based at each of the terminals combined for purposes of this subdivision. The listing shall specify the number of vehicles of each type at each terminal.

(C) The carrier provides to the department at the designated terminal during the inspection all maintenance records and driver records and a representative sample of vehicles based at each of the terminals included within the combination of terminals.

(2) If the carrier fails to provide the maintenance records, driver records, and representative sample of vehicles pursuant to subparagraph (C) of paragraph (1), the department shall assign the carrier an unsatisfactory terminal rating and require a reinspection to be conducted pursuant to subdivision (h).

(3) For purposes of this subdivision, the following terms have the meanings given:

(A) "Driver records" includes pull notice system records, driver proficiency records, and driver timekeeping records.

(B) "Maintenance records" includes all required maintenance, lubrication, and repair records and drivers' daily vehicle condition reports.

(C) "Representative sample" means the following, applied separately to the carrier's fleet of motor trucks and truck tractors and its fleet of trailers:

Fleet Size	Representative Sample
1 or 2	All
3 to 8	3
9 to 15	4
16 to 25	6
26 to 50	9
51 to 90	14
91 or more	20

(c) Each motor carrier who, in this state, directs the operation of, or maintains, any vehicle of a type described in subdivision (a) shall designate one or more terminals, as defined in Section 34515, in this state where vehicles can be inspected by the department pursuant to paragraph (3) of subdivision (a) of Section 34501 and where vehicle inspection and maintenance records and driver records will be made available for inspection.

(d) The department shall inspect, at least every 25 months, every terminal, as defined in Section 34515, of any motor carrier who, at any time, operates any vehicle described in subdivision (a).

As used in this section and in Sections 34505.5 and 34505.6, subdivision (f) of Section 34500 includes only those combinations where the gross vehicle weight rating (GVWR) of the towing vehicle exceeds 10,100 pounds, and subdivision (g) of Section 34500 includes only those vehicles transporting hazardous material for which the display of placards is required pursuant to Section 27903, a license is required pursuant to Section 32000.5, or for which hazardous waste hauler registration is required pursuant to Section 25163 of the Health and Safety Code. Historical vehicles, as described in Section 5004, vehicles which display special identification plates in accordance with Section 5011, implements of husbandry, as defined in Chapter 1 (commencing with Section 36000) of Division 16, and vehicles owned or operated by an agency of the federal government are not subject to this section or to Sections 34505.5 and 34505.6.

(e) (1) It is the responsibility of the motor carrier to schedule with the department the inspection required by subdivision (d). The motor carrier shall submit an application form supplied by the department, accompanied by the required fee. The fee, which is nonrefundable, is four hundred dollars ($400) per terminal, except

in the case of an owner-operator, as defined in Section 3557 of the Public Utilities Code, or a nonregulated motor carrier who owns, leases, or otherwise operates not more than one heavy power unit and not more than three towed vehicles described in subdivision (a), (b), (e), (f), or (g) of Section 34500, for which the fee shall be one hundred dollars ($100). Federal, state, and local public entities are exempt from the fee requirements of this section.

(2) Except as provided in paragraph (4), the inspection term for each inspected terminal of a motor carrier shall expire 25 months from the date the terminal receives a satisfactory compliance rating, as specified in subdivision (h). Applications and fees for subsequent inspections shall be submitted not earlier than nine months and not later than seven months before the expiration of the motor carrier's then current inspection term. If the motor carrier has submitted the inspection application and the required accompanying fees, but the department is unable to complete the inspection within the 25-month inspection period, then no additional fee shall be required for the inspection requested in the original application.

(3) All fees collected pursuant to this subdivision shall be deposited in the Motor Vehicle Account in the State Transportation Fund. An amount equal to the fees collected shall be available for appropriation by the Legislature from the Motor Vehicle Account to the department for the purpose of conducting truck terminal inspections and for the additional roadside safety inspections required by Section 34514.

(4) To avoid the scheduling of a renewal terminal inspection pursuant to this section during a carrier's seasonal peak business periods, the current inspection term of a terminal that has paid all required fees and has been rated satisfactory in its last inspection may be reduced by not more than nine months if a written request is submitted by the carrier to the department at least four months prior to the desired inspection month, or at the time of payment of renewal inspection fees in compliance with paragraph (2), whichever date is earlier. A motor carrier may request this adjustment of the inspection term during any inspection cycle. A request made pursuant to this paragraph shall not result in a fee proration and does not relieve the carrier from the requirements of paragraph (2).

(f) It is unlawful for a motor carrier to operate any vehicle subject to this section without having submitted an inspection application and the required fees to the department as required by subdivision (e) or (h).

(g) On and after July 1, 1992, it is unlawful for any motor carrier to operate any vehicle subject to this section after submitting an inspection application to the department, without the inspection described in subdivision (d) having been performed and a safety compliance report having been issued to the motor carrier within the 25-month inspection period or within 60 days immediately preceding the inspection period.

(h) (1) Any inspected terminal that receives an unsatisfactory compliance rating shall be reinspected within 120 days after the issuance of the unsatisfactory compliance rating.

(2) A terminal's first required reinspection under this subdivision shall be without charge unless one or more of the following is established:

(A) The motor carrier's operation presented an imminent danger to public safety.

(B) The motor carrier was not in compliance with the requirement to enroll all drivers in the pull notice program pursuant to Section 1808.1.

(C) The motor carrier failed to provide all required records and vehicles for a consolidated inspection pursuant to subdivision (b).

(3) If the unsatisfactory rating was assigned for any of the reasons set forth in paragraph (2), the carrier shall submit the required fee as provided in paragraph (4).

(4) Applications for reinspection pursuant to paragraph (3) or for second and subsequent consecutive reinspections under this subdivision shall be accompanied by the fee specified in paragraph (1) of subdivision (e) and shall be filed within 60 days of issuance of the unsatisfactory compliance rating. The reinspection fee is nonrefundable.

(5) When a motor carrier's Public Utilities Commission operating authority is suspended as a result of an unsatisfactory compliance rating, the department shall conduct no reinspection until requested to do so by the Public Utilities Commission.

(i) It is the intent of the Legislature that the department make its best efforts to inspect terminals within the resources provided. In the interest of the state, the Commissioner of the California Highway Patrol may extend for a period not to exceed six months the inspection terms beginning prior to July 1, 1990.

(j) To encourage truck terminal operators to attain continuous satisfactory compliance ratings, the department may establish and implement an incentive program consisting of the following:

(1) After the second consecutive satisfactory compliance rating assigned as a result of an inspection conducted pursuant to subdivision (d), and each consecutive satisfactory compliance rating thereafter, an appropriate certificate, denoting the number of consecutive satisfactory ratings, shall be awarded to the terminal, unless the terminal has received an unsatisfactory compliance rating as a result of any inspection conducted in the interim between the consecutive inspections conducted under subdivision (d).

(2) Unless the department's evaluation of the motor carrier's safety record indicates a declining level of compliance, a terminal that has attained two consecutive satisfactory compliance ratings assigned following inspections conducted pursuant to subdivision (d) is eligible for an administrative review in lieu of the next required inspection, unless the terminal has received an unsatisfactory

compliance rating as a result of any inspection conducted in the interim between the consecutive inspections conducted under subdivision (d). An administrative review shall consist of all of the following:

(A) A signed request by a terminal management representative requesting the administrative review in lieu of the required inspection containing a promise to continue to maintain a satisfactory level of compliance for the next 25-month inspection term.

(B) A review with a terminal management representative of the carrier's record as contained in the department's files.

(C) Absent any cogent reasons to the contrary, upon completion of subparagraphs (A) and (B), the safety compliance rating assigned during the last required inspection shall be extended for 25 months.

(3) Administrative reviews may not be conducted consecutively. At the completion of the 25-month inspection term following an administrative review, a terminal inspection shall be conducted pursuant to subdivision (d). If this inspection results in a satisfactory compliance rating, the terminal shall again be eligible for an administrative review in lieu of the next required inspection. If the succession of satisfactory ratings is interrupted by a rating of other than satisfactory, the terminal shall again attain two consecutive satisfactory ratings to become eligible for an administrative review.

SEC. 80.1. Section 34501.12 of the Vehicle Code is amended to read:

34501.12. (a) Notwithstanding Section 408, as used in this section and Sections 34505.5 and 34505.6, "motor carrier" means the registered owner of any vehicle described in subdivision (a), (b), (e), (f), or (g) of Section 34500, except in either of the following circumstances:

(1) The registered owner leases the vehicle to another person for a term of more than four months. If the lease is for more than four months, the lessee is the motor carrier.

(2) The registered owner operates the vehicle exclusively under the authority and direction of another person. If the operation is exclusively under the authority and direction of another person, that other person may assume the responsibilities as the motor carrier. If not so assumed, the registered owner is the motor carrier. A person who assumes the motor carrier responsibilities of another pursuant to subdivision (b) shall provide to that other person whose motor carrier responsibility is so assumed, a completed copy of a department form documenting that assumption, stating the period for which responsibility is assumed, and signed by an agent of the assuming person. A legible copy shall be carried in each vehicle or combination of vehicles operated on the highway during the period for which responsibility is assumed. That copy shall be presented upon request by any authorized employee of the department. The original completed departmental form documenting the assumption shall be provided to the department within 30 days of the assumption.

If the assumption of responsibility is terminated, the person who had assumed responsibility shall so notify the department in writing within 30 days of the termination.

(b) (1) A motor carrier may combine two or more terminals for purposes of the inspection required by subdivision (d) subject to all of the following conditions:

(A) The carrier identifies to the department, in writing, each terminal proposed to be included in the combination of terminals for purposes of this subdivision prior to an inspection of the designated terminal pursuant to subdivision (d).

(B) The carrier provides the department, prior to the inspection of the designated terminal pursuant to subdivision (d) a written listing of all its vehicles of a type subject to subdivision (a), (b), (e), (f), or (g) of Section 34500 which are based at each of the terminals combined for purposes of this subdivision. The listing shall specify the number of vehicles of each type at each terminal.

(C) The carrier provides to the department at the designated terminal during the inspection all maintenance records and driver records and a representative sample of vehicles based at each of the terminals included within the combination of terminals.

(2) If the carrier fails to provide the maintenance records, driver records, and representative sample of vehicles pursuant to subparagraph (C) of paragraph (1), the department shall assign the carrier an unsatisfactory terminal rating and require a reinspection to be conducted pursuant to subdivision (h).

(3) For purposes of this subdivision, the following terms have the following meaning:

(A) "Driver records" includes pull notice system records, driver proficiency records, and driver timekeeping records.

(B) "Maintenance records" includes all required maintenance, lubrication, and repair records and drivers' daily vehicle condition reports, and declarations of compliance required by Section 43703 of the Health and Safety Code.

(C) "Representative sample" means the following, applied separately to the carrier's fleet of motor trucks and truck tractors and its fleet of trailers:

Fleet Size	Representative Sample
1 or 2	All
3 to 8	3
9 to 15	4
16 to 25	6
26 to 50	9
51 to 90	14
91 or more	20

(c) Each motor carrier who, in this state, directs the operation of, or maintains, any vehicle of a type described in subdivision (a) shall designate one or more terminals, as defined in Section 34515, in this state where vehicles can be inspected by the department pursuant to paragraph (3) of subdivision (a) of Section 34501 and where vehicle inspection and maintenance records and driver records will be made available for inspection.

(d) (1) The department shall inspect, at least every 25 months, every terminal, as defined in Section 34515, of any motor carrier who, at any time, operates any vehicle described in subdivision (a).

(2) As used in this section and in Sections 34505.5 and 34505.6, subdivision (f) of Section 34500 includes only those combinations where the gross vehicle weight rating (GVWR) of the towing vehicle exceeds 10,100 pounds, and subdivision (g) of Section 34500 includes only those vehicles transporting hazardous material for which the display of placards is required pursuant to Section 27903, a license is required pursuant to Section 32000.5, or for which hazardous waste hauler registration is required pursuant to Section 25163 of the Health and Safety Code. Historical vehicles, as described in Section 5004, vehicles which display special identification plates in accordance with Section 5011, implements of husbandry, as defined in Chapter 1 (commencing with Section 36000) of Division 16, and vehicles owned or operated by an agency of the federal government are not subject to this section or to Sections 34505.5 and 34505.6.

(e) (1) It is the responsibility of the motor carrier to schedule with the department the inspection required by subdivision (d). The motor carrier shall submit an application form supplied by the department, accompanied by the required fee. The fee, which is nonrefundable, is four hundred dollars ($400) for each terminal, except in the case of an owner-operator, as defined in Section 3557 of the Public Utilities Code, or a nonregulated motor carrier who owns, leases, or otherwise operates not more than one heavy power unit and not more than three towed vehicles described in subdivision (a), (b), (e), (f), or (g) of Section 34500, for which the fee shall be one hundred dollars ($100). Federal, state, and local public entities are exempt from the fee requirements of this section.

(2) Except as provided in paragraph (4), the inspection term for each inspected terminal of a motor carrier shall expire 25 months from the date the terminal receives a satisfactory compliance rating, as specified in subdivision (h). Applications and fees for subsequent inspections shall be submitted not earlier than nine months and not later than seven months before the expiration of the motor carrier's then current inspection term. If the motor carrier has submitted the inspection application and the required accompanying fees, but the department is unable to complete the inspection within the 25-month inspection period, then no additional fee shall be required for the inspection requested in the original application.

(3) All fees collected pursuant to this subdivision shall be deposited in the Motor Vehicle Account in the State Transportation Fund. An amount equal to the fees collected shall be available for appropriation by the Legislature from the Motor Vehicle Account to the department for the purpose of conducting truck terminal inspections and for the additional roadside safety inspections required by Section 34514.

(4) To avoid the scheduling of a renewal terminal inspection pursuant to this section during a carrier's seasonal peak business periods, the current inspection term of a terminal that has paid all required fees and has been rated satisfactory in its last inspection may be reduced by not more than nine months if a written request is submitted by the carrier to the department at least four months prior to the desired inspection month, or at the time of payment of renewal inspection fees in compliance with paragraph (2), whichever date is earlier. A motor carrier may request this adjustment of the inspection term during any inspection cycle. A request made pursuant to this paragraph shall not result in a fee proration and does not relieve the carrier from the requirements of paragraph (2).

(f) It is unlawful for a motor carrier to operate any vehicle subject to this section without having submitted an inspection application and the required fees to the department as required by subdivision (e) or (h).

(g) It is unlawful for any motor carrier to operate any vehicle subject to this section after submitting an inspection application to the department, without the inspection described in subdivision (d) having been performed and a safety compliance report having been issued to the motor carrier within the 25-month inspection period or within 60 days immediately preceding the inspection period.

(h) (1) Any inspected terminal that receives an unsatisfactory compliance rating shall be reinspected within 120 days after the issuance of the unsatisfactory compliance rating.

(2) A terminal's first required reinspection under this subdivision shall be without charge unless one or more of the following is established:

(A) The motor carrier's operation presented an imminent danger to public safety.

(B) The motor carrier was not in compliance with the requirement to enroll all drivers in the pull notice program pursuant to Section 1808.1.

(C) The motor carrier failed to provide all required records and vehicles for a consolidated inspection pursuant to subdivision (b).

(3) If the unsatisfactory rating was assigned for any of the reasons set forth in paragraph (2), the carrier shall submit the required fee as provided in paragraph (4).

(4) Applications for reinspection pursuant to paragraph (3) or for second and subsequent consecutive reinspections under this subdivision shall be accompanied by the fee specified in paragraph

(1) of subdivision (e) and shall be filed within 60 days of issuance of the unsatisfactory compliance rating. The reinspection fee is nonrefundable.

(5) When a motor carrier's Public Utilities Commission operating authority is suspended as a result of an unsatisfactory compliance rating, the department shall conduct no reinspection until requested to do so by the Public Utilities Commission.

(i) It is the intent of the Legislature that the department make its best efforts to inspect terminals within the resources provided.

(j) To encourage truck terminal operators to attain continuous satisfactory compliance ratings, the department may establish and implement an incentive program consisting of the following:

(1) After the second consecutive satisfactory compliance rating assigned as a result of an inspection conducted pursuant to subdivision (d), and each consecutive satisfactory compliance rating thereafter, an appropriate certificate, denoting the number of consecutive satisfactory ratings, shall be awarded to the terminal, unless the terminal has received an unsatisfactory compliance rating as a result of any inspection conducted in the interim between the consecutive inspections conducted under subdivision (d).

(2) Unless the department's evaluation of the motor carrier's safety record indicates a declining level of compliance, a terminal that has attained two consecutive satisfactory compliance ratings assigned following inspections conducted pursuant to subdivision (d) is eligible for an administrative review in lieu of the next required inspection, unless the terminal has received an unsatisfactory compliance rating as a result of any inspection conducted in the interim between the consecutive inspections conducted under subdivision (d). An administrative review shall consist of all of the following:

(A) A signed request by a terminal management representative requesting the administrative review in lieu of the required inspection containing a promise to continue to maintain a satisfactory level of compliance for the next 25-month inspection term.

(B) A review with a terminal management representative of the carrier's record as contained in the department's files.

(C) Absent any cogent reasons to the contrary, upon completion of subparagraphs (A) and (B), the safety compliance rating assigned during the last required inspection shall be extended for 25 months.

(3) Administrative reviews may not be conducted consecutively. At the completion of the 25-month inspection term following an administrative review, a terminal inspection shall be conducted pursuant to subdivision (d). If this inspection results in a satisfactory compliance rating, the terminal shall again be eligible for an administrative review in lieu of the next required inspection. If the succession of satisfactory ratings is interrupted by a rating of other than satisfactory, the terminal shall again attain two consecutive satisfactory ratings to become eligible for an administrative review.

SEC. 81. Section 34505.9 of the Vehicle Code is amended to read:

34505.9. (a) As used in this section, the following terms have the following meanings:

(1) An "intermodal chassis" is a trailer designed for carrying intermodal freight containers.

(2) An "ocean marine terminal" is a terminal, as defined in Section 34515, located at a port facility that engages in the loading and unloading of the cargo of ocean-going vessels.

(b) An ocean marine terminal that receives and dispatches intermodal chassis may conduct the intermodal roadability inspection program, as described in this section, in lieu of the inspection required by Section 34505.5, if the terminal meets all of the following conditions:

(1) More than 1,000 chassis are based at the ocean marine terminal.

(2) The ocean marine terminal has, following the two most recent consecutive inspections required by Section 34501.12, received satisfactory compliance ratings, and the terminal has received no unsatisfactory compliance ratings as a result of any inspection conducted in the interim between the consecutive inspections conducted under Section 34501.12.

(3) Each intermodal chassis exiting the ocean marine terminal shall have a current decal and supporting documentation in accordance with Section 396.17 of Title 49 of the Code of Federal Regulations.

(4) The ocean marine terminal's intermodal roadability inspection program consists of all of the following:

(A) Each time an intermodal chassis is released from the ocean marine terminal, the chassis shall be inspected. The inspection shall include, but not be limited to, brake adjustment, brake system components and leaks, suspension systems, tires and wheels, vehicle connecting devices, and lights and electrical system.

(B) Each inspection shall be recorded on a daily roadability inspection report, which shall include, but not be limited to, all of the following:

(i) Positive identification of the intermodal chassis, including company identification number.

(ii) Date and nature of each inspection.

(iii) Signature of the ocean marine terminal operator or an authorized representative.

(C) Records of each inspection conducted pursuant to subparagraph (A) shall be retained for 90 days at the ocean marine terminal at which each chassis is based and shall be made available upon request by any authorized employee of the department.

(D) Defects noted on any intermodal chassis shall be repaired, and the repairs shall be recorded on the intermodal chassis maintenance file, before the intermodal chassis is released from the control of the ocean marine terminal. No vehicle subject to this

section shall be operated on the highway other than to a place of repair until all defects listed during the inspection conducted pursuant to subparagraph (A) have been corrected and attested to by the signature of the operator's authorized representative.

(E) Records of maintenance or repairs performed pursuant to the inspection in subparagraph (A) shall be maintained at the ocean marine terminal for two years and shall be made available upon request of the department. Repair records may be retained in a computer system if printouts of those records are provided to the department upon request.

(F) Individuals performing ocean marine terminal roadability inspections pursuant to this section shall, at a minimum, be qualified as set forth in Section 396.19 of Title 49 of the Code of Federal Regulations. Evidence of each inspector's qualification shall be retained by the ocean marine terminal operator for the period during which the inspector is performing intermodal roadability inspections.

(c) Following a terminal inspection in which the department determines an operator of an ocean marine terminal utilizing the intermodal roadability inspection program has failed to comply with the requirements of this section, the department shall conduct a reinspection within 120 days as specified in subdivision (h) of Section 34501.12. If the terminal fails the reinspection, the department shall direct the operator to comply with the requirements of Section 34505.5 until eligibility to utilize the inspection program described in this section is reestablished pursuant to subdivision (b). If any inspection results in an unsatisfactory rating due to conditions presenting an imminent danger to the public safety, as described in Section 34505.6 or 34506.7, the department immediately shall direct the operator to comply with the requirements of Section 34505.5 until eligibility to utilize the inspection program described in this section is reestablished pursuant to subdivision (b).

(d) 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. 82. Section 35550 of the Vehicle Code is amended to read:

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

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

(c) The maximum wheel load is the lesser of the following:

(1) The load limit established by the tire manufacturer, as molded on at least one sidewall of the tire.

(2) A load of 620 pounds per lateral inch of tire width, as determined by the manufacturer's rated tire width as molded on at least one sidewall of the tire for all axles except the steering axle, in which case paragraph (1) applies.

SEC. 83. Section 40152 of the Vehicle Code is amended to read:

40152. (a) Whenever any vehicle or combination of vehicles is found to be not registered as required by this code, and a notice to appear is issued or a complaint is filed for that violation, the person to whom the notice to appear is issued or against whom the complaint is filed shall produce in court satisfactory evidence that the vehicle or combination of vehicles has been registered or has had the appropriate fees paid, or has been reduced to junk, to conform with the requirements of this code. The court shall not dismiss the offense until that evidence is produced.

(b) A four-day, nonresident commercial trip permit of the type authorized in Section 4004 may not be accepted as evidence of registration compliance as required in subdivision (a) of this section.

SEC. 84. Section 40225 of the Vehicle Code is amended to read:

40225. (a) An equipment violation entered on the notice of parking violation attached to the vehicle under Section 40203 shall be processed in accordance with this article. All of the violations entered on the notice of parking violation shall be noticed in the notice of delinquent parking violation delivered pursuant to Section 40206, together with the amount of civil penalty.

(b) Whether or not a vehicle is in violation of any regulation governing the standing or parking of a vehicle but is in violation of subdivision (a) of Section 5204, a person authorized to enforce parking laws and regulations shall issue a written notice of parking violation, setting forth the alleged violation. The violation shall be processed pursuant to this section.

(c) The civil penalty for each equipment violation is the amount established for the violation in the Uniform Bail and Penalty Schedule, as adopted by the Judicial Council, except that upon proof of the correction to the processing agency, the penalty shall be reduced to ten dollars ($10). The civil penalty for each violation of Section 5204 is the amount established for the violation in the Uniform Bail and Penalty Schedule, as adopted by the Judicial Council, except that upon proof of the correction to the processing agency, the penalty shall be reduced to ten dollars ($10).

(d) Fifty percent of any penalty collected pursuant to this section for registration or equipment violations by a processing agency shall be paid to the county for remittance to the State Treasurer and the remaining 50 percent shall be retained by the issuing agency and processing agency subject to the terms of the contract described in Section 40200.5.

(e) Subdivisions (a) and (b) do not preclude the recording of a violation of subdivision (a) or (b) of Section 4000 on a notice of

parking violation or the adjudication of that violation under the civil process set forth in this article.

SEC. 85. Section 40254 of the Vehicle Code is amended to read:

40254. (a) If a vehicle is found, by automated devices, by visual observation, or otherwise, to have evaded tolls on any toll road or toll bridge, and subdivision (d) of Section 40250 does not apply, an issuing agency or a processing agency, as the case may be, shall, within 21 days of the violation, forward to the registered owner a notice of toll evasion violation setting forth the violation, including reference to the section violated, the approximate time thereof, and the location where the violation occurred. The notice of toll evasion violation shall also set forth the following:

(1) The vehicle license plate number.

(2) If practicable, the registration expiration date and the make of the vehicle.

(3) A clear and concise explanation of the procedures for contesting the violation and appealing an adverse decision pursuant to Sections 40255 and 40256.

(b) Once the authorized person has notified the processing agency of a toll evasion violation, the processing agency shall prepare and forward the notice of violation to the registered owner of the vehicle cited for the violation. Any person, including the authorized person and any member of the person's department or agency, or any peace officer who, with intent to prejudice, damage, or defraud, is found guilty of altering, concealing, modifying, nullifying, or destroying, or causing to be altered, concealed, modified, nullified, or destroyed, the face of the original or any copy of a notice that was retained by the authorized person before it is filed with the processing agency or with a person authorized to receive the deposit of the toll evasion violation is guilty of a misdemeanor.

(c) If, after a copy of the notice of toll evasion violation has been sent to the registered owner, the issuing person determines that, due to a failure of proof of apparent violation, the notice of toll evasion violation should be dismissed, the issuing agency may recommend, in writing, that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the processing agency.

(d) If the processing agency makes a finding that there are grounds for dismissal, the notice of toll evasion violation shall be canceled pursuant to Section 40255.

(e) Under no circumstances shall a personal relationship with any law enforcement officer, public official, law enforcement agency, processing agency or toll operating agency or entity be grounds for dismissal of the violation.

SEC. 86. 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. 87. Section 2.1 of this bill incorporates amendments to Section 564 of the Code of Civil Procedure proposed by both this bill and Senate Bill 947. 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 564 of the Code of Civil Procedure, and (3) this bill is enacted after Senate Bill 947, in which case Section 564 of the Code of Civil Procedure as amended by Section 2 of this bill, shall remain operative only until the operative date of Senate Bill 947, at which time Section 2.1, of this bill shall become operative.

SEC. 88. Section 65 of this bill incorporates amendments to Section 16056 of the Vehicle Code proposed by both this bill and Senate Bill 1129. 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 16056 of the Vehicle Code, and (3) this bill is enacted after Senate Bill 1129, in which case Section 16056 of the Vehicle Code as amended by Section 64 of this bill, shall remain operative only until the operative date of Senate Bill 1129, at which time Section 65 of this bill shall become operative.

SEC. 89. Section 66.1 of this bill incorporates amendments to Section 16431 of the Vehicle Code proposed by both this bill and Senate Bill 1129. 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 16431 of the Vehicle Code, and (3) this bill is enacted after Senate Bill 1129, in which case Section 16431 of the Vehicle Code, as amended by Section 66 of this bill, shall remain operative only until the operative date of Senate Bill 1129, at which time Section 66.1 of this bill shall become operative.

SEC. 90. (a) Section 69.1 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by both this bill and

Assembly Bill 3157. 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 22651 of the Vehicle Code, (3) Assembly Bill 2288 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 3157, in which case Section 22651 of the Vehicle Code, as amended by Section 69 of this bill, shall remain operative only until the operative date of Assembly Bill No. 3157, at which time Section 69.1 of this bill shall become operative and Sections 69.2 and 69.3 of this bill shall not become operative.

(b) Section 69.2 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by both this bill and Assembly Bill 2288. 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 22651 of the Vehicle Code, (3) Assembly Bill 3157 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 2288, in which case Sections 22651 of the Vehicle Code, as amended by Section 69 of this bill, shall remain operative only until the operative date of Assembly Bill 2288, at which time Section 69.2 of this bill shall become operative, and Sections 69.1, and 69.3 of this bill shall not become operative.

(c) Section 69.3 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by this bill, Assembly Bill 3157, and Assembly Bill 2288. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) all three bills amend Section 22651 of the Vehicle Code, and (3) this bill is enacted after Assembly Bill 3157, and Assembly Bill 2288, in which case Section 22651 of the Vehicle Code, as amended by Section 69 of this bill, shall remain operative only until the operative date of Assembly Bills 2288 and 3157, at which time Section 69.3 of this bill shall become operative and Sections 69.1 and 69.2 of this bill shall not become operative.

SEC. 91. Section 80.1 of this bill incorporates amendments to Section 34501.12 of the Vehicle Code proposed by both this bill and Assembly Bill 1675. 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 34501.12 of the Vehicle Code, and, (3) this bill is enacted after Assembly Bill 1675, in which case Section 34501.12 of the Vehicle Code as amended by Section 80 of this bill, shall remain operative only until the operative date of Assembly Bill 1675, at which time Section 80.1 of this bill shall become operative.

SEC. 92. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to put into effect as quickly as possible certain statutory changes that need to become effective for the orderly administration of transportation and vehicle laws as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 1155

An act to amend Section 44251 of the Health and Safety Code, and to amend Sections 505.2, 4456.1, 11400, 11405, 27360.5, and 40600 of, and to add Section 16000.8 to, the Vehicle Code, relating to transportation.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 44251 of the Health and Safety Code is amended to read:

44251. (a) The state board shall specify smog index numbers for new light-duty passenger vehicles and light-duty trucks with a gross vehicle weight up to 6,000 pounds to be sold in California. For gasoline and alternative fuel vehicles, that smog index shall be based on certification data quantifying tailpipe and evaporative emissions of ozone precursor chemicals for classes of vehicles.

(b) For diesel fuel vehicles, the smog index shall be based on certification data quantifying tailpipe emissions of ozone precursor chemicals and particulate matter. Particulate emissions from diesel fuel vehicles certified to model year standards that did not include a particulate limit may be assumed to be equal to particulate emissions for model year 1985 diesel fuel vehicles.

(c) The state board shall specify the relative weight of emissions of ozone precursor chemicals and particulates in the smog index values for diesel vehicles. This weighting shall be based on the relative importance of each category of emissions to air quality problems in California.

(d) Smog index number 1.0 shall be assigned to a hypothetical light-duty passenger vehicle, a hypothetical light-duty truck with a gross vehicle weight of 3,750 pounds or less, and a hypothetical light-duty truck with a gross vehicle weight of greater than 3,750 pounds up to 6,000 pounds, emitting the maximum amount of pollution allowed for that class of vehicle certified for sale in this state as of the January 1 immediately preceding the operative date of this section. The state board shall determine the existing class or classes of vehicles to which the smog index shall be applied.

(e) Not later than 180 days from the operative date of this section, the state board, in consultation with the bureau, shall specify smog

index numbers for existing light-duty passenger vehicles and light-duty trucks with a gross vehicle weight of up to 6,000 pounds registered in the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District, and all pre-1966 light-duty passenger vehicles and light-duty trucks with a gross vehicle weight of up to 6,000 pounds in use in California. Smog index numbers shall be based on the tailpipe and evaporative emissions levels to which the vehicle was certified for sale. No smog index shall be assigned to a pre-1966 vehicle for which certification was not required prior to its initial sale. Smog index assignments for motor vehicles in use shall be adjusted as provided in Section 44255.

SEC. 1.1. Section 44251 of the Health and Safety Code is amended to read:

44251. (a) The state board shall specify smog index numbers for new light-duty passenger vehicles and light-duty trucks with a gross vehicle weight up to 6,000 pounds to be sold in California. For gasoline and alternative fuel vehicles, that smog index shall be based on certification data quantifying tailpipe and evaporative emissions of ozone precursor chemicals for classes of vehicles.

(b) For diesel fuel vehicles, the smog index shall be based on certification data quantifying tailpipe emissions of ozone precursor chemicals and particulate matter. Particulate emissions from diesel fuel vehicles certified to model year standards that did not include a particulate limit may be assumed to be equal to particulate emissions for model year 1985 diesel fuel vehicles.

(c) The state board shall specify the relative weight of emissions of ozone precursor chemicals and particulates in the smog index values for diesel vehicles. This weighting shall be based on the relative importance of each category of emissions to air quality problems in California.

(d) Smog index number 1.0 shall be assigned to a hypothetical light-duty passenger vehicle, a hypothetical light-duty truck with a gross vehicle weight of 3,750 pounds or less, and a hypothetical light-duty truck with a gross vehicle weight of greater than 3,750 pounds up to 6,000 pounds, emitting the maximum amount of pollution allowed for that class of vehicle certified for sale in this state as of the January 1 immediately preceding the operative date of this section. The state board shall determine the existing class or classes of vehicles to which the smog index shall be applied.

SEC. 2. Section 505.2 of the Vehicle Code is amended to read:

505.2. (a) A "registration service" is a person engaged in the business of soliciting or receiving any application for the registration, renewal of registration, or transfer of registration or ownership, of any vehicle of a type subject to registration under this code, or of transmitting or presenting any of those documents to the department, when any compensation is solicited or received for the service. "Registration service" includes, but is not limited to, a person

who, for compensation, processes registration documents, conducts lien sales, or processes vehicle dismantling documents.

(b) "Registration service" does not include any of the following:

(1) A person performing registration services on a vehicle acquired by that person for his or her own personal use or for use in the regular course of that person's business.

(2) A person who solicits applications for or sells, for compensation, nonresident permits for the operation of vehicles within this state.

(3) An employee of one or more dealers or dismantlers, or a combination thereof, who performs registration services for vehicles acquired by, consigned to, or sold by the employing dealers or dismantlers.

(4) A motor club, as defined in Section 12142 of the Insurance Code.

(5) A person who performs registration services exclusively for vehicles registered pursuant to Article 9.5 (commencing with Section 5301) of Chapter 1 of Division 3 or Article 4 (commencing with Section 8050) of Chapter 4 of Division 3.

(6) A common carrier acting in the regular course of its business in transmitting applications.

SEC. 3. Section 4456.1 of the Vehicle Code is amended to read:

4456.1. (a) A dealer or lessor-retailer who violates paragraph (1), (2), or (7) of subdivision (a) of Section 4456 shall pay to the department an administrative service fee of five dollars ($5) for each violation.

(b) A dealer or lessor-retailer who violates paragraph (4), (5), or (6) of subdivision (a) of Section 4456 shall pay to the department an administrative service fee of twenty-five dollars ($25) for each violation.

(c) Each violation of subdivision (a) of Section 4456 is, in addition to the obligation to pay an administrative service fee, a separate cause for discipline pursuant to Section 11613 or 11705.

(d) Failure to pay an administrative service fee within 30 days after written demand from the department is a separate cause for discipline pursuant to Section 11613 or 11705.

SEC. 3.1. Section 4456.1 of the Vehicle Code is amended to read:

4456.1. (a) A dealer or lessor-retailer who violates paragraph (1), (2), or (7) of subdivision (a) of Section 4456 shall pay to the department an administrative service fee of five dollars ($5) for each violation.

(b) A dealer or lessor-retailer who violates paragraph (4), (5), or (6) of subdivision (a) of Section 4456 shall pay to the department an administrative service fee of twenty-five dollars ($25) for each violation.

(c) Subject to subdivision (d), each violation of Section 4456 is, in addition to the obligation to pay an administrative service fee, a separate cause for discipline pursuant to Section 11613 or 11705.

(d) A violation of subdivision (a) of Section 4456 because of a dealer or lessor-retailer's failure to submit to the department an application for registration or transfer of registration is a cause for disciplinary action pursuant to Section 11613 or 11705 only if the initial application is submitted 50 days or more following the date of sale of the vehicle if the vehicle is a used vehicle, and 40 days if the vehicle is a new vehicle.

SEC. 4. Section 11400 of the Vehicle Code is amended to read:

11400. No person shall act as a registration service, engage in the business of soliciting or receiving any application for the registration, renewal of registration, or transfer of registration or ownership of any vehicle of a type subject to registration under this code, or transmit or present any of those documents to the department, if any compensation is solicited or received for the service, without a license or temporary permit issued by the department pursuant to this chapter, or if that license or temporary permit has expired or been canceled, suspended, or revoked, or the terms and conditions of an agreement entered into pursuant to Section 11408 have not been fulfilled.

SEC. 5. Section 11405 of the Vehicle Code is amended to read:

11405. The department may refuse to issue a license to, or may suspend, revoke, or cancel the license of, a person to act as a registration service for any of the following reasons:

(a) The person has been convicted of a felony or a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity.

(b) The person is, or has been, the holder, or a managerial employee of the holder, of any occupational license issued by the department which has been suspended or revoked.

(c) The person has used a false or fictitious name, knowingly made any false statement, or knowingly concealed any material fact, in the application for the license.

(d) The person has knowingly made, or acted with negligence or incompetence, or knowingly or negligently accepted or failed to inquire about any false, erroneous, or incorrect statement or information submitted to the registration service or the department in the course of the licensed activity.

(e) The person has knowingly or negligently permitted fraud, or willfully engaged in fraudulent practices, with reference to clients, vehicle registrants, members of the public, or the department in the course of the licensed activity.

(f) The person has knowingly or negligently committed or was responsible for any violation, cause for license refusal, or cause for discipline under Section 20 or Division 3 (commencing with Section 4000), Division 3.5 (commencing with Section 9840), Division 4 (commencing with Section 10500), or Division 5 (commencing with Section 11100), or any rules or regulations adopted under those provisions.

(g) The person has failed to obtain and maintain an established place of business in California.

(h) The person has failed to keep the business records required by Section 11406.

(i) The person has violated any term or condition of a restricted license to act as a registration service.

(j) The person has committed or was responsible for any other act, occurrence, or event in California or any foreign jurisdiction which would be cause to refuse to issue a license to, or to suspend, revoke, or cancel the license of, a person to act as a registration service.

SEC. 6. Section 16000.8 is added to the Vehicle Code, to read:

16000.8. (a) Notwithstanding any other provision of this chapter, if the failure of the driver of a motor vehicle involved in an accident to prove the existence of financial responsibility, as required by Section 16020, was due to the fraudulent acts of an insurance agent or broker, the department shall terminate any suspension action taken pursuant to Section 16070, when both of the following conditions are met:

(1) The driver provides documentation from the Department of Insurance that the insurance agent or broker has been found to have committed fraud in the transaction of automobile liability insurance, or provides documentation that criminal charges have been filed against the agent or broker due to fraud or theft related to the sale of automobile liability insurances.

(2) The driver furnishes proof to the department that financial responsibility meeting the requirements of Section 16021 is currently in effect.

(b) It is the intent of the Legislature in enacting this section that individuals who are the victims of insurance fraud not be penalized for violating the financial responsibility laws when that violation was due to the fraudulent acts of others. Persons with documented evidence of fraud involving their insurance coverage, such as where an insurance agent accepted the premium payment for coverage but willfully failed to obtain the coverage and led the customer to believe insurance was in effect, should retain their driving privileges provided they give evidence that valid liability insurance is currently in effect.

SEC. 7. Section 27360.5 of the Vehicle Code is amended to read:

27360.5. (a) No parent or legal guardian, when present in a private passenger motor vehicle as defined in Section 27315, shall permit his or her child or ward who is four years of age or older but less than 16 years of age and weighs 40 pounds or more to be transported upon a highway in the motor vehicle without providing and properly using, for each child or ward, a safety belt meeting applicable federal motor vehicle safety standards.

(b) No driver shall transport on a highway any child who is four years of age or older but less than 16 years of age and weighs 40 pounds or more in a private passenger motor vehicle, as defined in

Section 27315, without providing and properly using a safety belt meeting applicable federal motor vehicle safety standards. This subdivision does not apply to a driver if the parent or legal guardian of the child is also present in the vehicle and is not the driver.

(c) (1) A first offense under this section is punishable by a fine of fifty dollars ($50).

(2) A second or subsequent offense under this section is punishable by a fine of one hundred dollars ($100).

SEC. 8. Section 40600 of the Vehicle Code is amended to read:

40600. (a) Notwithstanding any other provision of law, a peace officer who has successfully completed a course or courses of instruction, approved by the Commission on Peace Officer Standards and Training, in the investigation of traffic accidents may prepare, in triplicate, on a form approved by the Judicial Council, a written notice to appear when the peace officer has reasonable cause to believe that any person involved in a traffic accident has violated a provision of this code not declared to be a felony or a local ordinance and the violation was a factor in the occurrence of the traffic accident.

(b) A notice to appear shall contain the name and address of the person, the license number of the person's vehicle, if any, the name and address, when available, of the registered owner or lessee of the vehicle, the offense charged, and the time and place when and where the person may appear in court or before a person authorized to receive a deposit of bail. The time specified shall be at least 10 days after the notice to appear is delivered.

(c) The preparation and delivery of a notice to appear pursuant to this section is not an arrest.

(d) For purposes of this article, a peace officer has reasonable cause to issue a written notice to appear if, as a result of the officer's investigation, the officer has evidence, either testimonial or real, or a combination of testimonial and real, that would be sufficient to issue a written notice to appear if the officer had personally witnessed the events investigated.

(e) As used in this section, "peace officer" means any person specified under Section 830.1 or 830.2 of the Penal Code, with the exception of members of the California National Guard.

(f) A written notice to appear prepared on a form approved by the Judicial Council and issued pursuant to this section shall be accepted by any court.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. 10. Section 1.1 of this bill incorporates amendments to Section 44251 of the Health and Safety Code proposed by both this bill and Assembly Bill 3020. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 44251 of the Health and Safety Code, and, (3) this bill is enacted after AB 3020, in which case Section 44251 of the Health and Safety Code, as amended by AB 3020, shall remain operative only until the operative date of this bill, at which time Section 1.1 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 11. Section 3.1 of this bill incorporates amendments to Section 4456.1 of the Vehicle Code proposed by both this bill and Assembly Bill 2286. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 4456.1 of the Vehicle Code, and, (3) this bill is enacted after AB 2286, in which case Section 3 of this bill shall not become operative.

CHAPTER 1156

An act to amend Sections 22507.5, 22651, 22651.7, 22850.5, 40202, 40207, and 40209 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 22507.5 of the Vehicle Code is amended to read:

22507.5. (a) Notwithstanding Section 22507, local authorities may, by ordinance or resolution, prohibit or restrict the parking or standing of vehicles on certain streets or highways, or portions thereof, between the hours of 2 a.m. and 6 a.m., and may, by ordinance or resolution, prohibit or restrict the parking or standing, on any street, or portion thereof, in a residential district, of commercial vehicles having a manufacturer's gross vehicle weight rating of 10,000 pounds or more. The ordinance or resolution relating to parking between the hours of 2 a.m. and 6 a.m. may provide for a system of permits for the purpose of exempting from the prohibition or restriction of the ordinance or resolution handicapped persons, residents, and guests of residents of residential areas, including, but not limited to, high-density and multiple-family dwelling areas,

lacking adequate offstreet parking facilities. The ordinance or resolution relating to the parking or standing of commercial vehicles in a residential district, however, shall not be effective with respect to any commercial vehicle making pickups or deliveries of goods, wares, and merchandise from or to any building or structure located on the restricted streets or highways or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling, or construction of any building or structure upon the restricted streets or highways for which a building permit has previously been obtained.

(b) Subdivision (a) of this section is applicable to vehicles specified in subdivision (a) of Section 31303, except that no ordinance or resolution adopted pursuant to subdivision (a) of this section may permit the parking of those vehicles which is otherwise prohibited under this code.

(c) For the purpose of implementing this section, each local authority may, by ordinance, define the term "residential district" in accordance with its zoning ordinance. The ordinance shall not be effective unless the legislative body of the local authority holds a public hearing on the proposed ordinance prior to its adoption, with notice of the public hearing given in accordance with Section 65090 of the Government Code.

SEC. 2. Section 22651 of the Vehicle Code, as amended by Section 17 of Chapter 10 of the Statutes of 1996, is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a state agency, city, or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a

hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

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

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

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

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

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

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

(*l*) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair,

or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

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

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

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

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

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

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

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

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

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

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

SEC. 3. Section 22651 of the Vehicle Code, as amended by Section 17 of Chapter 10 of the Statutes of 1996, is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full

control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with

reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

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

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

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

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

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

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

(*l*) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are

erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

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

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

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

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

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

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

will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

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

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

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

SEC. 3.5. Section 22651 of the Vehicle Code, as amended by Section 17 of Chapter 10 of the Statutes of 1996, is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a state agency, city, or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been

impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

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

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

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

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

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

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

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

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

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

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

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

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

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

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

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

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

SEC. 3.7. Section 22651 of the Vehicle Code, as amended by Section 17 of Chapter 10 of the Statutes of 1996, is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been

impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

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

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

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

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

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

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

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

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

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

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

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

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

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

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

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

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

SEC. 4. Section 22651.7 of the Vehicle Code is amended to read:

22651.7. In addition to, or as an alternative to, removal, any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried employee who is engaged in directing traffic or enforcing parking laws and regulations, of a jurisdiction in which a vehicle is located may immobilize the vehicle with a device designed and manufactured for the immobilization of vehicles, on a highway or any public lands located within the territorial limits in which the officer or employee may act if the vehicle is found upon a highway or any public lands and it is known to have been issued five or more notices of parking violations which are delinquent because the owner or person in control of the vehicle has not responded to the agency responsible for processing notices of parking violation within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation, or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17. The vehicle may be immobilized until that person furnishes to the immobilizing law enforcement agency all of the following:

(a) Evidence of his or her identity.

(b) An address within this state at which he or she can be located.

(c) Satisfactory evidence that the full amount of parking penalties has been deposited for all notices of parking violation issued for the vehicle and any vehicles registered to the registered owner of the immobilized vehicle and that bail has been deposited for all traffic violations of the registered owner that have not been cleared. The

requirements in subdivision (c) shall be fully enforced by the immobilizing law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records. A notice of parking violation issued to the vehicle shall be accompanied by a warning that repeated violations may result in the impounding or immobilization of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail, or both, have been deposited that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is immobilized. Evidence of current registration shall be produced after a vehicle has been immobilized or, at the discretion of the immobilizing law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

SEC. 5. Section 22850.5 of the Vehicle Code is amended to read:

22850.5. (a) A state agency, city, county, or city and county may adopt a regulation, ordinance, or resolution establishing procedures for the release of properly impounded vehicles and for the imposition of a charge equal to its administrative costs relating to the removal, impound, storage, or release of the vehicles. Those administrative costs may be waived by the state agency or local authority upon verifiable proof that the vehicle was reported stolen at the time the vehicle was removed.

(b) Administrative costs shall only be imposed on the registered owner or the agents of that owner and shall not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive, of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lienholder's total charges and proper administrative costs.

(c) Any administrative costs imposed shall be collected by the authority at the time of release.

(d) The administration charges imposed pursuant to this section shall be in addition to any other charges authorized or imposed pursuant to this code.

SEC. 5.5. Section 22850.5 of the Vehicle Code is amended to read:

22850.5. (a) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution establishing procedures for the release of properly impounded vehicles and for the imposition of a charge equal to its administrative costs relating to the removal, impound, storage, or release of the vehicles. Those administrative costs may be waived by the local or state authority upon verifiable proof that the vehicle was reported stolen at the time the vehicle was removed.

(b) Administrative costs shall only be imposed on the registered owner or the agents of that owner and shall not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive, of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lienholder's total charges and proper administrative costs.

(c) Any administrative costs imposed shall be collected by the local or state authority at the time of release.

(d) The administration charges imposed pursuant to this section shall be in addition to any other charges authorized or imposed pursuant to this code.

SEC. 6. Section 40202 of the Vehicle Code is amended to read:

40202. (a) If a vehicle is unattended during the time of the violation, the peace officer or person authorized to enforce parking laws and regulations shall securely attach to the vehicle a notice of parking violation setting forth the violation, including reference to the section of this code or of the Public Resources Code, the local ordinance, or the federal statute or regulation so violated; the date; the approximate time thereof; the location where the violation occurred; a statement printed on the notice indicating that the date of payment is required to be made not later than 21 calendar days from the date of citation issuance; and the procedure for the registered owner, lessee, or rentee to deposit the parking penalty or, pursuant to Section 40215, contest the citation. The notice of parking violation shall also set forth the vehicle license number and registration expiration date if they are visible, the last four digits of the vehicle identification number, if that number is readable through the windshield, the color of the vehicle, and, if possible, the make of the vehicle. The notice of parking violation, or copy thereof, shall be considered a record kept in the ordinary course of business of the issuing agency and the processing agency and shall be prima facie evidence of the facts contained therein.

(b) The notice of parking violation shall be served by attaching it to the vehicle either under the windshield wiper or in another conspicuous place upon the vehicle so as to be easily observed by the person in charge of the vehicle upon the return of that person.

(c) Once the issuing officer has prepared the notice of parking violation and has attached it to the vehicle as provided in subdivisions (a) and (b), the officer shall file the notice with the processing agency. Any person, including the issuing officer and any member of the officer's department or agency, or any peace officer who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed the face of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the processing agency or with a person authorized to receive the deposit of the parking penalty, is guilty of a misdemeanor.

(d) If, during the issuance of a notice of parking violation, without regard to whether the vehicle was initially attended or unattended, the vehicle is driven away prior to attaching the notice to the vehicle, the issuing officer shall file the notice with the processing agency. The processing agency shall mail, within 15 calendar days of issuance of the notice of parking violation, a copy of the notice of parking violation to the registered owner.

(e) If, within 21 days after the notice of parking violation is attached to the vehicle, the issuing officer or the issuing agency determines that, in the interest of justice, the notice of parking violation should be canceled, the issuing agency, pursuant to subdivision (a) of Section 40215, shall cancel the notice of parking violation or, if the issuing agency has contracted with a processing agency, shall notify the processing agency to cancel the notice of parking violation pursuant to subdivision (a) of Section 40215. The reason for the cancellation shall be set forth in writing.

If, after a copy of the notice of parking violation is attached to the vehicle, the issuing officer determines that there is incorrect data on the notice, including, but not limited to, the date or time, the issuing officer may indicate in writing, on a form attached to the original notice, the necessary correction to allow for the timely entry of the notice on the processing agency's data system. A copy of the correction shall be mailed to the registered owner of the vehicle.

(f) Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for cancellation.

SEC. 7. Section 40207 of the Vehicle Code is amended to read:

40207. The notice of delinquent parking violation shall contain the information specified in subdivision (a) of Section 40202 and Section 40203, and, additionally shall contain a notice to the registered owner that, unless the registered owner pays the parking penalty or contests the citation within 21 calendar days from the date of issuance of the citation or 14 calendar days after the mailing of the notice of delinquent parking violation or completes and files an affidavit of nonliability which complies with Section 40208 or 40209, the renewal of the vehicle registration shall be contingent upon compliance with the notice of delinquent parking violation. If the registered owner, by appearance or by mail, makes payment to the processing agency within 21 calendar days from the date of issuance of the citation or 14 calendar days after the mailing of the notice of delinquent parking violation, the parking penalty shall consist solely of the amount of the original penalty. No additional fees, assessments, or other charges shall be added.

SEC. 8. Section 40209 of the Vehicle Code is amended to read:

40209. If the affidavit of nonliability is returned to the processing agency within 30 calendar days of the mailing of the notice of delinquent parking violation together with the proof of a written lease or rental agreement between a bona fide rental or leasing

company, and its customer which identifies the rentee or lessee and provides the driver's license number, name, and address of the rentee or lessee, the processing agency shall serve or mail to the rentee or lessee identified in the affidavit of nonliability a notice of delinquent parking violation. If payment is not received within 21 calendar days from the date of issuance of the citation or 14 calendar days after the mailing of the notice of delinquent parking violation, the processing agency may proceed against the rentee or lessee pursuant to Section 40220.

SEC. 9. (a) Section 3 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by both this bill and Senate Bill No. 1797. 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 22651 of the Vehicle Code, (3) AB 3020 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1797, in which case Section 22651 of the Vehicle Code as amended by SB 1797, shall remain operative only until the operative date of this bill, at which time Section 3 of this bill shall become operative, and Sections 2, 3.5, and 3.7 of this bill shall not become operative.

(b) Section 3.5 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by both this bill and Assembly Bill No. 3020. 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 22651 of the Vehicle Code, (3) SB 1797 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3020, in which case Section 22651 of the Vehicle Code, as amended by AB 3020, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Sections 2, 3, and 3.7 of this bill shall not become operative.

(c) Section 3.7 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by this bill, SB 1797, and AB 3020. 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 22651 of the Vehicle Code, and (3) this bill is enacted after SB 1797 and AB 3020, in which case Section 22651 of the Vehicle Code, as amended by SB 1797 or AB 3020, whichever has the higher chapter number, shall remain operative only until the operative date of this bill, at which time Section 3.7 of this bill shall become operative, and Sections 2, 3, and 3.5 of this bill shall not become operative.

SEC. 10. Section 5.5 of this bill incorporates amendments to Section 22850.5 of the Vehicle Code proposed by both this bill and Senate Bill 1797. 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 22850.5 of the Vehicle Code, and (3) this bill is enacted after SB 1797, in which case Section 22850.5 of the Vehicle

Code, as amended by SB 1797, shall remain operative only until the operative date of this bill, at which time Section 5.5 of this bill shall become operative, and Section 5 of this bill shall not become operative.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 1157

An act to amend Section 1176 of, and to add Section 1185 to, the Unemployment Insurance Code, relating to employment development, and making an appropriation therefor.

[Approved by Governor September 30, 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) For the tax year that ended December 31, 1994, more than 710,000 taxpayers potentially overpaid disability insurance contributions. Of these taxpayers, approximately 224,000 received refunds averaging one hundred thirty-five dollars ($135) per taxpayer.

(b) Employers are required to withhold disability insurance contributions on wages paid annually up to the taxable wage limit.

(c) Overpayment of these contributions is caused by the increasing number of workers who are employed by more than one employer in any given tax year.

(d) A worker is due a refund when he or she is employed by more than one employer in any given tax year and combined wages from those employers exceeds the taxable wage limit.

(e) The Employment Development Department and the Franchise Tax Board have the capability to identify and issue refunds for overpayments to a majority of those taxpayers.

SEC. 2. Section 1176 of the Unemployment Insurance Code is amended to read:

1176. If, by reason of an employee receiving wages from more than one employer during any calendar year, the wages received by him or her during such year exceed the remuneration upon which contributions are payable under Section 985, and the sum of the amount of tax imposed by Section 984 plus the amount of contributions under Section 3260 deducted from such wages exceeds the amount required under this division, the employee is entitled to a refund or credit of the amount of the excess.

SEC. 3. Section 1185 is added to the Unemployment Insurance Code, to read:

1185. The director, in collaboration with the Franchise Tax Board, shall do all of the following:

(a) Identify taxpayers who have overpaid disability insurance contributions in any or all tax years from January 1, 1993, to December 31, 1995, inclusive, and have not received refunds due to them. For purposes of this subdivision, "taxpayers" means any individual who filed a FTB Form 540A or 540EZ.

(b) (1) By October 15, 1997, credit the taxpayers identified in this subdivision with the amount of any overpaid disability insurance pursuant to Section 17061 of the Revenue and Taxation Code. If the amount credited pursuant to this subdivision exceeds any amount then due from the taxpayer, the difference shall be refunded to the taxpayer. For taxable years 1993, 1994, and 1995, inclusive, interest, at the rate established pursuant to Section 19521 of the Revenue and Taxation Code, shall accrue from April 15 of the tax year following the overpayment to a date preceding the date of the refund warrant by not more than 30 days.

(2) Beginning with the 1996 tax year, the director shall continue to identify and refund overpayments, with interest, to those taxpayers who have overpaid disability insurance contributions, and who have not received refunds due to them. Any refunds made by the director shall be in the form of direct payments from the Disability Fund. Interest on refunds made by the director shall accrue from January 1 of the tax year following the overpayment to a date preceding the date of the refund warrant by not more than 30 days.

(3) Notwithstanding Section 1181, any interest accrued and either credited or paid pursuant to this subdivision shall be credited or paid at a rate equal to the earnings rate of funds placed in the Disability Fund.

SEC. 4. This act shall not require a General Fund appropriation to the Employment Development Department or any other state agency. Administrative costs and contributions refunded pursuant to this act shall be appropriated from the Disability Fund.

CHAPTER 1158

An act to amend Sections 1903, 2550.5, 33310, 33313, 39005, 39619, 41851.11, 41851.12, 42127.8, 42140, 42141, 44757, 48664, 52616.4, and 60352 of, to add Sections 53073, 53083, and 60650.5 to, and to repeal Sections 53073 and 53083 of, the Education Code, to amend Section 13 of Chapter 200 of the Statutes of 1996 and Section 25 of Chapter 204 of the Statutes of 1996, and to amend Item 6110-001-0001, Item 6110-231-0001, and Item 6110-233-0001 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 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 1903 of the Education Code is amended to read:

1903. (a) For purposes of attendance, "adult" means any prisoner confined in any county jail, county honor farm, county industrial farm, county or joint county road camp, or community-based correction program, and who has enrolled in classes or schools authorized by Section 1900.

(b) This chapter is applicable to a community-based correction program.

SEC. 1.5. Section 2550.5 of the Education Code is amended to read:

2550.5. (a) For each fiscal year to which Section 2550.6 applies, revenue limit increases calculated pursuant to subdivisions (b) to (f), inclusive, of Section 2550.6 and revenue limit increases made pursuant to Section 2550.7 shall be funded from the amounts available for the inflation adjustment calculated pursuant to paragraph (2) of subdivision (a) of Section 2550.2. Those amounts shall be allocated as set forth in this section.

(b) The revenue limit increases calculated pursuant to subdivisions (b) to (f), inclusive, of Section 2550.6 shall be funded as follows:

(1) The revenue limit increases shall be funded from the funds derived from any amounts available for the inflation adjustment calculated pursuant to paragraph (2) of subdivision (a) of Section 2550.2.

(2) If no funds from the inflation adjustment are available, or if the funds available for the inflation adjustment are not sufficient to fully fund the revenue limit increases, the Superintendent of Public Instruction shall reduce the revenue limit increases for the fiscal year in which the funds are insufficient on a pro rata basis.

(c) In the first fiscal year that the funds that are available for the inflation adjustment calculated pursuant to paragraph (2) of subdivision (a) of Section 2550.2 exceed the amount needed to fully fund the revenue limit increases calculated pursuant to subdivisions (b) to (f), inclusive, of Section 2550.6, the Superintendent of Public Instruction shall, from those excess funds, allocate the amounts necessary to increase the revenue limits of county superintendents of schools pursuant to Section 2550.7. If those funds are not sufficient to fully fund the revenue limit increases described in Section 2550.7, the Superintendent of Public Instruction shall make allocations for those revenue limit increases on a pro rata basis. The Superintendent of Public Instruction shall, in each subsequent fiscal year that those excess funds are available, continue to allocate funds for the purposes of Section 2550.7 until the revenue limits are increased to the level contemplated by that section.

(d) If after making the allocation described in subdivision (c) excess funds are available, the Superintendent of Public Instruction shall, for the purpose of making an inflation adjustment, allocate those funds in a uniform amount per unit of average daily attendance for each school receiving a revenue limit increase pursuant to the relevant subdivision of subdivision (b), (c), (d), (e), or (f) of Section 2550.6, with the uniform amount per unit of average daily attendance reduced as necessary and the amount thereby saved allocated to any school that does not receive a revenue limit increase pursuant to the relevant subdivision (b), (c), (d), (e), or (f) of Section 2550.6 to ensure that it has a funding level per unit of average daily attendance in the then current fiscal year that is not less than the highest funding level per unit of average daily attendance in the then current fiscal year for schools that receive a revenue limit increase pursuant to the relevant subdivision (b), (c), (d), (e), or (f) of Section 2550.6.

(e) If in the 2000–01 fiscal year there are not sufficient funds available to fully fund revenue limits for schools subject to Section 2550.6 at the level calculated pursuant to subdivision (f) of Section 2550.6, then the Superintendent of Public Instruction shall continue to equalize revenue limits per unit of average daily attendance for those schools in a manner consistent with Section 2550.6 in the 2001–02 fiscal year, and in any subsequent fiscal year, as necessary, and consistent with subdivision (f) of Section 2550.6.

(f) The equalization of revenue limits per unit of average daily attendance pursuant to Section 2550.6 shall be complete in the fiscal year in which the revenue limit per unit of average daily attendance, as computed pursuant to Section 2550.6, for each school subject to this section is within the following range:

(1) Not less than the statewide average revenue limit per unit of average daily attendance for pupils enrolled in schools for the prior fiscal year multiplied by the inflation adjustment computed pursuant to paragraph (2) of subdivision (a) of Section 2550.2 for the current fiscal year.

(2) Not more than the product calculated in paragraph (1) multiplied by 1.15.

(g) For the purpose of this section, "school" or "schools" means juvenile court schools operated by a county superintendent of schools pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27, and county community schools described in subdivision (c) of Section 1981, that are subject to Section 2550.6.

SEC. 2. Section 33310 of the Education Code is amended to read:

33310. The State Department of Education may sell any materials related to its scope and duties.

SEC. 3. Section 33313 of the Education Code is amended to read:

33313. All moneys received from the sale of materials pursuant to Section 33310 of the Education Code shall be deposited in the State Treasury to the credit of the fund against which the cost of printing the publication was charged.

SEC. 4. Section 39005 of the Education Code is amended to read:

39005. (a) In order to promote the safety of pupils, comprehensive community planning, and greater educational usefulness of schoolsites before acquiring title to property for a new schoolsite, the governing board of each school district, including any district governed by a city board of education, shall give the Department of Transportation written notice of the proposed acquisition and shall submit any information required by the department if the proposed site is within two miles, measured by air line, of that point on an airport runway or a potential runway included in an airport master plan that is nearest to the site.

(b) If the Department of Transportation is no longer in operation, the governing board of the school district shall, in lieu of notifying the Department of Transportation, notify the United States Department of Transportation or any other appropriate agency, in writing, of the proposed acquisition for the purpose of obtaining from the department or other agency any information or assistance that it may desire to give.

(c) The Department of Transportation shall investigate the proposed site and, within 30 working days after receipt of the notice, shall submit to the governing board a written report and its recommendations concerning acquisition of the site. As part of the investigation, the Department of Transportation shall give notice thereof to the owner and operator of the airport who shall be granted the opportunity to comment upon the proposed schoolsite.

(d) The governing board shall not acquire title to the property until the report of the Department of Transportation has been received. If the report does not favor the acquisition of the property for a schoolsite or an addition to a present schoolsite, the governing board shall not acquire title to the property until 30 days after the department's report is received and until the department's report has been read at a public hearing duly called after 10 days' notice published once in a newspaper of general circulation within the

school district or, if there is no newspaper of general circulation within the school district, in a newspaper of general circulation within the county in which the property is located.

(e) Except as provided in subdivision (d), if the Department of Transportation in its report submitted to a governing board of a school district does not favor acquisition of a proposed site that is within two miles of the centerline of an active runway, no state funds or local funds shall be apportioned or expended for the acquisition of that site, construction of any school building on that site, or for the expansion of any existing site to include that site.

(f) This section does not apply to sites acquired prior to January 1, 1966, nor to any additions or extensions to those sites.

(g) If the recommendations of the Department of Transportation are unfavorable, the recommendations shall not be overruled without the express approval of the State Allocation Board.

SEC. 5. Section 39619 of the Education Code is amended to read:

39619. (a) Whenever, in any given fiscal year, a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established pursuant to Section 39618 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, exclusive of categorical aid funds and any proceeds from the sale of district property which were expended for the purpose of the district deferred maintenance account, in either the 1978–79 or 1979–80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to Section 42237 or 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of $^1/_2$ percent of the district's current-year revenue limit average daily attendance multiplied by the average, per unit of average daily attendance, of the total expenditures of the total general funds and adult education funds for districts of similar size and type, as defined in subdivision (b) of Section 42238.4, for the second prior fiscal year, exclusive of any amounts expended for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780) of Part 10.

(c) Notwithstanding subdivision (a), in order to be eligible to receive state aid pursuant to subdivision (b), no district shall be required to budget from local district funds an amount greater than $^1/_2$ percent of the district's current-year revenue limit average daily attendance, multiplied by the average, per unit of average daily attendance, of the total expenditures and ending fund balances of the total general funds and adult education funds for districts of similar

size and type, as defined in subdivision (b) of Section 42238.4 for the second prior fiscal year, exclusive of any amounts expended for capital outlay or debt service.

SEC. 6. Section 41851.11 of the Education Code is amended to read:

41851.11. (a) For any fiscal year that the amount of funding allocated in the annual Budget Act for home-to-school transportation allocations pursuant to this article, exceeds the amount appropriated for that purpose in the previous fiscal year, exclusive of supplemental grant funding, the Superintendent of Public Instruction shall allocate the amount in excess to each eligible school district that receives a state apportionment for home-to-school transportation pursuant to this article according to the following formula:

(1) The amount of each school district's unreimbursed cost of transportation per unit of average daily attendance, as adjusted for walking distance, that cannot be recovered through transportation fees, shall be determined as follows:

(A) Add the approved cost of home-to-school transportation for the school district for the prior fiscal year to the approved cost of special education transportation for the school district for the prior fiscal year.

(B) Add the following amounts:

(i) The home-to-school transportation allowance for the school district for the prior fiscal year less all amounts received in that allowance for transportation associated with regional occupational centers, regional occupational programs, and adjustments to correct prior fiscal year home-to-school transportation allowances.

(ii) The special education transportation allowance for the school district for the prior fiscal year less all adjustments to correct prior fiscal year special education transportation allowances.

(iii) The amount of funding received by the school district for the costs of transportation associated with court-ordered or voluntary desegregation programs received by the school district in the prior fiscal year exclusive of any supplemental grant funding received by the school district in that prior fiscal year. The amount calculated pursuant to this paragraph shall not include any funding received by the school district for court-ordered or voluntary desegregation used for the acquisition of schoolbuses.

(C) Subtract the school district's total transportation allowance calculated pursuant to subparagraph (B) from the school district's total approved transportation cost calculated pursuant to subparagraph (A).

(D) Multiply the remainder calculated pursuant to subparagraph (C) by .80.

(E) Multiply the product calculated in subparagraph (D) by the percentage of pupils in the school district who receive free school lunches.

(F) Divide the amount calculated pursuant to subparagraph (E) by the total number of units of average daily attendance reported by the school district for the second principal apportionment for the prior fiscal year pursuant to Section 41601.

(2) The Superintendent of Public Instruction shall make the necessary computations to determine the amount of the statewide average cost of transportation per unit of average daily attendance, as adjusted for walking distance, that cannot be recovered through transportation fees, for the prior fiscal year as described in subparagraph (F) of paragraph (1).

(3) The Superintendent of Public Instruction shall make the following calculations for each school district to arrive at the amount of the allowance, if any, a school district will receive pursuant to this section:

(A) Subtract the amount of statewide average unreimbursed cost of transportation per unit of average daily attendance, as adjusted for walking distance, that cannot be recovered through transportation fees, calculated pursuant to paragraph (2) from the amount of the school district's unreimbursed cost of transportation per unit of average daily attendance, as adjusted for walking distance, that cannot be recovered through transportation fees, calculated pursuant to subparagraph (F) of subdivision (1).

(B) If the remainder calculated pursuant to subparagraph (A) is less than or equal to zero, then the school district is not entitled to an allowance pursuant to this section.

(C) If the amount calculated in subparagraph (A) is more than zero, multiply the amount calculated pursuant to subparagraph (A) by the total number of units of average daily attendance reported by the school district for the second principal apportionment for the prior fiscal year pursuant to Section 41601.

(D) The Superintendent of Public Instruction shall apportion the amounts calculated in subparagraph (C) to each school district eligible to receive an allowance pursuant to this section, except that if the total funds available for allowances pursuant to this section is not sufficient to fully fund the formula established in this section, the amount allocated to each school district shall be reduced on a proportionate basis.

(b) A high school district or a necessary small school district may substitute the number of pupils enrolled in the school district and receiving assistance from the Aid to Families with Dependent Children program for the number of pupils receiving free school lunches for the purpose of the calculation under subdivision (a).

(c) No school district may receive funding pursuant to this section if the school district has walking distances less than the minimum walking distances specified for reimbursement eligibility in the regulations of the State Department of Education in effect during the 1981 calendar year. If the county sheriff or California Highway Patrol commander within whose jurisdiction the school district is located

certifies that these minimum walking distances create a safety hazard for pupils attending a particular school in a school district, the Superintendent of Public Instruction may waive the minimum walking distance for that school district.

(d) In the case of home-to-school transportation provided pursuant to a Joint Powers Authority, the Superintendent of Public Instruction shall for each school district within the Joint Powers Authority separately calculate the allowance pursuant to this section. The Superintendent of Public Instruction shall not calculate for the Joint Powers Authority an allowance pursuant to this section.

(e) This section shall become inoperative on July 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. 7. Section 41851.12 of the Education Code is amended to read:

41851.12. For purposes of this article:

(a) "Approved costs of home-to-school transportation" means the approved home-to-school transportation expense determined pursuant to Form J-141 (Version 4.0 for the 1993–94 fiscal year) as utilized by the State Department of Education.

(b) "Approved costs of special education transportation" means the approved special education transportation expense determined pursuant to Form J-141S (Version 4.0 for the 1993–94 fiscal year) as utilized by the State Department of Education.

SEC. 8. Section 42127.8 of the Education Code is amended to read:

42127.8. (a) The governing board provided for in subdivision (b) shall establish a unit to be known as the County Office Fiscal Crisis and Management Assistance Team. The team shall consist of persons having extensive experience in school district budgeting, accounting, data processing, telecommunications, risk management, food services, pupil transportation, purchasing and warehousing, facilities maintenance and operation, and personnel administration, organization, and staffing. The Superintendent of Public Instruction may appoint one employee of the State Department of Education to serve on the unit. The unit shall be operated under the immediate direction of an appropriate county office of education selected jointly, in response to an application process, by the Superintendent of Public Instruction and the Secretary of Child Development and Education.

(b) The unit established under subdivision (a) shall be selected and governed by a 23-member governing board consisting of one representative chosen by the California County Superintendents Educational Services Association from each of the 11 county service regions designated by the association, 11 superintendents of school districts chosen by the Association of California School Administrators from each of the 11 county service regions, and one

representative from the State Department of Education chosen by the Superintendent of Public Instruction. The governing board of County Office Fiscal Crisis and Management Assistance Team shall select a county superintendent of schools to chair the unit.

(c) The Superintendent of Public Instruction may request the unit to provide the assistance described in subdivision (b) of Section 1624, Section 1630, Section 33132, subdivision (b) of Section 42127.3, subdivision (c) of Section 42127.6, Section 42127.9, and subdivision (a) of Section 42238.2, and to review the fiscal and administrative condition of any county office of education.

(d) In addition to the functions described in subdivision (c), the unit shall do all of the following:

(1) Provide fiscal management assistance, at the request of any school district or county office of education. Each school district or county office of education receiving that assistance shall be required to pay the onsite personnel costs and travel costs incurred by the unit for that purpose, pursuant to rates determined by the governing board established under subdivision (b). The governing board annually shall distribute rate information to each school district and county office of education.

(2) Facilitate training for members of the governing board of the school district, district and county superintendents, chief financial officers within the district, and schoolsite personnel whose primary responsibility is to address fiscal issues. Training services shall emphasize efforts to improve fiscal accountability and expand the fiscal competency of local agencies. The unit shall use state professional associations, private organizations, and public agencies to provide guidance, support, and the delivery of any training services.

(3) Facilitate fiscal management training through the 10 county service regions to county office of education staff to ensure that they develop the technical skills necessary to perform their fiduciary duty. The governing board established pursuant to subdivision (b) shall determine the extent of the training that is necessary to comply with this paragraph.

(4) Produce a training calendar, to be disseminated semiannually to each county service region, that publicizes all of the fiscal training services that are being offered at the local, regional, and state levels.

(e) The governing board shall reserve not less than 25 percent, nor more than 50 percent, of its revenues each year for expenditure for the costs of contracts and professional services as management assistance to school districts or county superintendents of schools in which the board determines that a fiscal emergency exists.

(f) The governing board established under subdivision (b) may levy an annual assessment against each county office of education that elects to participate under this section in an amount not to exceed twenty cents ($0.20) per unit of total average daily attendance for all school districts within the county. The revenues

collected pursuant to that assessment shall be applied to the expenses of the unit.

(g) The governing board established under subdivision (b) may pay to the State Department of Education, from any available funds, a reasonable amount to reimburse the department for actual administrative expenses incurred in the review of the budgets and fiscal conditions of school districts and county superintendents of schools.

(h) When employed as a fiscal adviser by the State Department of Education pursuant to Section 1630, employees of the unit established pursuant to subdivision (a) shall be considered employees of the department for purposes of errors and omissions liability insurance.

SEC. 9. Section 42140 of the Education Code is amended to read:

42140. (a) If a school district or county office of education, either individually or as a member of a joint powers agency, provides health and welfare benefits for employees upon their retirement, and those benefits will continue after the employees reach 65 years of age, the superintendent of the school district or county superintendent of schools, as appropriate, annually shall provide information to the governing board of the school district or the county board of education, as appropriate, regarding the estimated accrued but unfunded cost of those benefits. The estimate of cost shall be based upon an actuarial report that incorporates annual fiscal information and is obtained by the superintendent at least every three years. The actuarial report shall be performed by an actuary who is a member of the American Academy of Actuaries. If the school district or county office of education regularly contracts for an actuarial report for other fiscal matters, a separate actuarial report is not required, if the estimate of costs required by this subdivision is separately and clearly set forth in that report.

(b) The cost information required by subdivision (a) and a copy of the actuarial report on which the estimated costs are based shall be presented by the superintendent at a public meeting of the governing board. At that meeting, the governing board shall disclose, as a separate agenda item, whether or not it will reserve a sufficient amount of money in its budget to fund the present value of the health and welfare benefits of existing retirees or the future cost of employees who are eligible for benefits in the current fiscal year, or both.

(c) The governing board annually shall certify to the county superintendent of schools the amount of money, if any, that it has decided to reserve in its budget for the cost of those benefits, and shall submit to the county superintendent of schools any budget revisions that may be necessary to account for that budget reserve.

(d) The county board of education annually shall certify to the Superintendent of Public Instruction the amount of money, if any,

that has been reserved in the budget of the county office of education for the cost of those benefits.

SEC. 10. Section 42141 of the Education Code is amended to read:

42141. (a) If a school district or county office of education, either individually or as a member of a joint powers agency, is self-insured for workers' compensation claims, the superintendent of the school district or county superintendent of schools, as appropriate, annually shall provide information to the governing board of the school district or the county board of education, as appropriate, regarding the estimated accrued but unfunded cost of those claims. The estimate of costs shall be based on an actuarial report that incorporates annual fiscal information and is obtained by the superintendent at least every three years. The actuarial report shall be performed by an actuary who is a member of the American Academy of Actuaries. If the school district or county office of education regularly contracts for an actuarial report for other fiscal matters, a separate actuarial report is not required, if the estimate of costs required by this subdivision is separately and clearly set forth in that report.

(b) The cost information required by subdivision (a) and a copy of the actuarial report on which the estimated costs are based shall be presented by the superintendent at a public meeting of the governing board. At that meeting, the governing board shall disclose, as a separate agenda item, whether or not it will reserve a sufficient amount of money in its budget to fund the present value of the accrued but unpaid workers' compensation claims or if it is otherwise decreasing the amount in its workers' compensation reserve fund.

(c) The governing board annually shall certify to the county superintendent of schools the amount of money, if any, that it has decided to reserve in its budget for the cost of those claims, and shall submit to the county superintendent of schools any budget revisions that may be necessary to account for that budget reserve.

(d) The county board of education annually shall certify to the Superintendent of Public Instruction the amount of money, if any, that has been reserved in the budget of the county office of education for the cost of those claims.

SEC. 11. Section 44757 of the Education Code is amended to read:

44757. A school district shall certify to the State Department of Education all of the following, as a condition to receiving funding pursuant to this chapter:

(a) That funds received pursuant to this chapter shall be spent by school districts only for the purpose of providing inservice training in reading instruction in the 1996–97 school year to certificated employees who provide direct instructional services to pupils enrolled in kindergarten or any of grades 1 to 3, inclusive, and to schoolsite administrators.

(b) That funds received pursuant to this chapter shall be expended for inservice training programs in reading instruction that address systematically explicit phonics instruction, phonemic

awareness, sound-symbol relationship, decoding, word-attack skills, spelling instruction, diagnosis of reading deficiencies, research on how children learn to read, research on how proficient readers read, the structure of the English language, relationships between reading, writing, and spelling, planning and delivery of appropriate reading instruction based on assessment and evaluation, and independent pupil reading of high quality books and the relationship of that reading to improved reading performance.

(c) That the school district will develop an action agenda that provides for a program of inservice training in reading instruction for all certificated employees in the school district who provide direct instructional services to pupils in kindergarten, or grades 1 to 3, inclusive. In that action agenda, the school district shall, to the extent feasible and appropriate, use:

(1) Staff development days authorized pursuant to Section 44670.6.

(2) Staff development funds available from all state and federal funding sources.

(3) Inservice training provided by publishers of reading program instructional materials adopted by the State Board of Education in 1996.

(4) A clinical diagnostic teacher training approach.

(5) Involvement of the parents and guardians of pupils enrolled in the school district.

(d) That inservice training provided pursuant to this section shall be coordinated and integrated with any inservice training in reading instruction funded by amounts received pursuant to the federal Goals 2000: Education America Act (P.L. 103-227) for the 1995–96 fiscal year.

SEC. 12. Section 48664 of the Education Code is amended to read:

48664. (a) In addition to funds from all other sources, the Superintendent of Public Instruction shall apportion to each school district that operates a community day school one thousand five hundred dollars ($1,500) per year, for each unit of average daily attendance reported at the annual apportionment for pupil attendance at community day schools. Average daily attendance reported for this program shall not exceed 0.375 percent of a district's prior year P2 average daily attendance in an elementary school district, 0.5 percent of a district's prior year P2 average daily attendance in a unified school district, or 0.625 percent of a district's prior year P2 average daily attendance in a high school district. The Superintendent of Public Instruction may reallocate to any school district any unexpended balance of the appropriations made for the purposes of this subdivision for actual pupil attendance in excess of the percentage specified in this subdivision for the school district in an amount not to exceed one-half of that percentage. However, the average daily attendance generated by pupils expelled pursuant to

subdivision (d) of Section 48915, shall not be subject to these percentage caps on average daily attendance.

(b) The average daily attendance of a community day school shall be determined by dividing the total number of days of attendance in all full school months, by a divisor of 70 in the first period of each fiscal year, by a divisor of 135 in the second period of each fiscal year, and by a divisor of 180 at the annual time of each fiscal year.

(c) The Superintendent of Public Instruction shall apportion to each school district that operates a community day school a sum equal to one dollar and forty cents ($1.40) multiplied by the total of the number of hours each schoolday, up to a maximum of two hours daily, that each community day school pupil remains at the community day school under the supervision of a school district employee following completion of the full six-hour instructional day.

(d) It is the intent of the Legislature that districts enter into consortia, as feasible, for the purpose of providing community day school programs. Any school district with fewer than 2,501 units of average daily attendance may request a waiver for any fiscal year of the funding limitations defined in this section. The Superintendent of Public Instruction shall approve a waiver if he or she deems it necessary in order to permit the operation of a community day school of reasonably comparable quality to those offered in a school district with 2,501 or more units of average daily attendance. In no event shall the amount allocated pursuant to a waiver exceed the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in kindergarten and grades 1 to 6, inclusive, or the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in grades 7 to 12, inclusive. The provisions of this act shall not apply to any school district that applied for a waiver within the funding limits established by this subdivision but was denied funding or not fully funded.

(e) The State Department of Education shall evaluate and report to the appropriate legislative policy committees and budget committees on or before October 1, 1998, and for two years thereafter the following programmatic and fiscal issues:

(1) The number of expulsions statewide.

(2) The number of school districts operating community day schools.

(3) Status of the countywide plans as defined in Section 48926.

(4) An evaluation of the community day school average daily attendance funding percentage cap.

(5) Number of small school districts requesting and the number receiving a waiver under this section.

(6) The effect of hourly accounting under Section 48663 for purposes of receiving the additional funding under Section 48664.

(7) The number of pupils and average daily attendance served in community day programs, further identified as the number expelled pursuant to subdivision (d) of Section 48915, subdivision (b) of

Section 48915, other expulsion criteria, or referred through a formal district process.

(8) Pupil outcome data and other data as required under Section 48916.1.

(9) Other programmatic or fiscal matters as determined by the State Department of Education.

(f) The additional funds provided in subdivisions (a) (c), and (d) shall only be allocated to the extent that funds are appropriated for this purpose in the annual Budget Act or other legislation, or both, except for pupils expelled pursuant to subdivision (d) of Section 48915. For pupils expelled pursuant to subdivision (d) of Section 48915, the funds apportioned under subdivision (a) are continuously appropriated from the General Fund to Section A of the State School Fund.

SEC. 13. Section 52616.4 of the Education Code is amended to read:

52616.4. (a) Money in the Adult Education Fund of a school district may be expended only for the following charges:

(1) Direct instructional costs relating directly to the adult education program, including, but not limited to, the salaries and benefits of adult education teachers and aides, textbooks, instructional supplies, travel and conference expenses for employees who work in the adult education program, and repair, maintenance, acquisition, and replacement of instructional equipment used in the adult education program.

(2) Direct support costs for the adult education program. For the purposes of this section, "direct support costs" means:

(A) Instructional administration and instructional media costs that are supported by auditable documentation. For purposes of this paragraph, instructional administration costs include the documented costs of individuals who, regardless of specific job title, administer the district's adult education program.

(B) School administration and pupil services costs that are supported by auditable documentation and that represent the activities of individuals whose employment by the school district is exclusively in support of the adult education program, or school administration and pupil services costs that are supported by auditable documentation and that meet all of the following conditions:

(i) Those costs are able to be identified in a separate contract with the adult education program.

(ii) The administration and services are provided exclusively to adult students and only for the period identified in the contract made pursuant to clause (i).

(iii) The services are provided during a time that is different than when services to pupils in kindergarten and grades 1 to 12, inclusive, are provided, and the administration is provided after 4:00 p.m.

(iv) The persons who provide the services and administration to adult students report to the adult education director during the period of the contract made pursuant to clause (i).

(v) The person providing the administration immediately supervises the adult school personnel.

(C) Plant maintenance and operations costs, including costs for facilities that are used to provide child care services to the children of the students attending the adult education program at a particular site as follows:

(i) For facilities that exclusively house adult education programs, the costs that are supported by auditable documentation. For purposes of this subparagraph, a facility that houses an adult education program and a regional occupational center or program or a child care program, or both, is a facility that exclusively houses an adult education program.

(ii) For facilities that are used by more than one program, including the adult education program, a district may charge the Adult Education Fund for an amount attributable to the adult education program, but this charge shall not exceed the amount derived from the following calculation:

(I) Calculate, according to the general description in the California School Accounting Manual, the prorated number of classroom units that the adult education program uses for instructional and child care purposes.

(II) Calculate the total number of classroom units in the district.

(III) Divide the amount calculated in (I) by the amount calculated in (II).

(IV) Multiply the quotient calculated in (III) by the district's total plant maintenance and operations costs.

(D) Facilities costs for nondistrict-owned facilities that exclusively house adult education programs, including, but not limited to, costs of facilities that are used to provide child care services to the children of the students attending the adult education program at the same site. For purposes of this paragraph, a facility that houses an adult education program and a regional occupational center or program or a child care program, or both, is a facility that exclusively houses an adult education program.

(E) Facilities costs for the acquisition of facilities originally acquired by adult education programs, or for the restoration of those facilities, including costs for debt service for the acquisition or restoration of a facility, including the costs of facilities that are used to provide child care services to the children of the students attending the adult education program at the same site.

For the purposes of this paragraph, "auditable documentation" means time reports and other contemporaneous records that establish the time that individual employees spend working for the adult education program, and the documentation that supports nonpersonnel costs substantiating that the adult education program

received the service, supply, or equipment. That documentation shall comply with the documentation requirements set forth in the California School Accounting Manual published pursuant to Section 41010.

(3) Indirect costs of the adult education program. For the purposes of this paragraph, "indirect costs" means the lesser of the school district's prior year indirect cost rate as approved by the State Department of Education or the statewide average indirect cost rate for high school and unified school districts for the second prior fiscal year.

(4) As an alternative to charging the costs in both paragraphs (2) and (3) to the adult education program, a school district may transfer not more than 8 percent of the annual revenue deposited in the district's Adult Education Fund to the district's general fund for expenditures the district incurs in operating its adult education program.

(b) If the State Department of Education and the Department of Finance concur that a school district has violated this section, the Superintendent of Public Instruction shall direct that school district to transfer double the amount improperly transferred to the district's general fund from that fund to the district's Adult Education Fund for the subsequent fiscal year, which amount shall be used for the improvement of the district's adult education program. If the school district fails to make that transfer as directed, the superintendent shall reduce the school district's regular apportionment determined pursuant to Section 42238 and increase the district's adult block entitlement determined pursuant to Section 52616 by that amount, which amount shall be used for improvement of the district's adult education program.

(c) It is the intent of the Legislature in enacting this section that responsible school district officials be held fully accountable for the accounting and reporting of adult education programs and that minor and inadvertent instances of noncompliance be resolved in a fair and equitable manner to the satisfaction of the Superintendent of Public Instruction and the Department of Finance.

(d) The Superintendent of Public Instruction, with the approval of the Department of Finance, may waive up to the full transfer amount in subdivision (b) if he or she determines that the noncompliance involved is minor or inadvertent, or both.

SEC. 14. Section 53073, as added to the Education Code by Assembly Bill 2769 of the 1995–96 Regular Session, is repealed.

SEC. 15. Section 53073 is added to the Education Code, to read:

53073. For the 1997–98 fiscal year, and each fiscal year thereafter, the superintendent shall compute an equalization adjustment for each eligible school district as follows:

(a) To arrive at the amount available for equalization:

(1) Calculate the sum of the following:

(A) The amount, if any, by which the amount appropriated for the purposes of this article for the current fiscal year exceeds the sum of any and all amounts allocated to school districts for the purposes of this article pursuant to the Budget Act of 1996.

(B) The product of the average amount received per pupil by each eligible school district in the prior fiscal year, and the total statewide average daily attendance reported for the second principal apportionment for each eligible school district for the current fiscal year.

(2) Subtract the amount arrived at pursuant to paragraph (1) from the sum of the following:

(A) The amount appropriated for the purposes of this article for the current fiscal year.

(B) Any amount allocated by the superintendent for the purposes of this section pursuant to paragraph (2) of subdivision (c) of Section 53091.

(b) The statewide target amount per unit of average daily attendance shall be the greater of one hundred fifty dollars ($150) or 4.6 percent of the statewide average revenue limit per unit of average daily attendance reported for the second principal apportionment for the current fiscal year for all types and sizes of school districts.

(c) To determine whether a school district is eligible for an equalization adjustment in the current fiscal year:

(1) Multiply the amount received by the district per unit of average daily attendance in the prior fiscal year pursuant to this article by the average daily attendance for the district reported for the second principal apportionment for the current fiscal year.

(2) Multiply the amount determined pursuant to subdivision (b) by the average daily attendance for the school district for the current fiscal year.

(3) Compare the amounts arrived at pursuant to paragraphs (1) and (2). If paragraph (1) is equal to or greater than paragraph (2) then the school district is not eligible for an equalization adjustment. If paragraph (1) is less than paragraph (2) then the school district is eligible for an equalization adjustment.

(d) To determine the amount of equalization funding for school districts eligible under subdivision (c), make the following computation:

(1) Determine the school district's funding per unit of average daily attendance pursuant to Section 53072, excluding any current year equalization.

(2) Calculate the statewide average amount per unit of average daily attendance received by school districts pursuant to paragraph (1).

(3) For each eligible school district, subtract the funding allocated per unit of average daily attendance for the current fiscal year in paragraph (1) from the current year statewide average calculated in

paragraph (2). If the difference is greater than zero the difference will have first priority on equalization funding.

(4) Multiply the difference in paragraph (3) by the school district's average daily attendance for the current year.

(5) Determine the statewide total of the amounts calculated in paragraph (4).

(6) If the statewide total in paragraph (5) exceeds the funding available for equalization determined pursuant to subdivision (a), divide the statewide sum calculated pursuant to paragraph (5) by the total funding available for equalization determined pursuant to subdivision (a).

(7) Multiply the percentage calculated in paragraph (6) by the positive differences identified in paragraph (3).

(8) Multiply the amount in paragraph (7) by the school district's average daily attendance in the current year. This amount represents the school district's first equalization adjustment.

(e) To the extent that funds are available after implementing subdivision (d), the remaining equalization funds shall be allocated to districts eligible pursuant to subdivision (c) as follows:

(1) Add the amount determined in paragraph (1) of subdivision (d) to the amount, if any, calculated pursuant to paragraph (7) of subdivision (d).

(2) Subtract the sum determined in paragraph (1) from the target rate established in subdivision (b).

(3) Multiply the positive difference calculated in paragraph (2), if any, by the school district's average daily attendance reported for the second principal apportionment for the current fiscal year.

(4) Determine the state total of the amounts calculated pursuant to paragraph (3).

(5) Subtract the statewide total calculated pursuant to paragraph (4) from the funding available for equalization as determined in subdivision (a).

(6) Compare the amounts determined pursuant to paragraphs (4) and (5). If the amount determined in paragraph (4) is less than or equal to the amount calculated in paragraph (5), the product calculated in paragraph (3) shall be added to the amount, if any, calculated in paragraph (8) of subdivision (d). The resulting sum represents the total equalization adjustment. If the amount in paragraph (4) exceeds the amount in paragraph (5), the total equalization adjustment shall be calculated as follows:

(A) Divide the amount determined in paragraph (5) by the amount calculated in paragraph (4).

(B) Multiply the percentage derived in subparagraph (A) by the amount in paragraph (3).

(C) Add the amount determined in subparagraph (B) to the amount pursuant to paragraph (8) of subdivision (d).

(f) If any of the amount available for equalization, as calculated pursuant to subdivision (a), remains after the superintendent has

allocated equalization adjustments to each eligible school district pursuant to subdivisions (d) and (e), the superintendent shall allocate an equal amount per unit of average daily attendance, of that remainder to each school district in the state.

SEC. 16. Section 53083, as added to the Education Code by Assembly Bill 2769 of the 1995–96 Regular Session, is repealed.

SEC. 17. Section 53083 is added to the Education Code, to read:

53083. For the 1997–98 fiscal year, and each fiscal year thereafter, the superintendent shall compute an equalization adjustment for each school district as follows:

(a) To arrive at the amount available for equalization:

(1) Calculate the sum of the following:

(A) The amount, if any, by which the amount appropriated for the purposes of this article for the current fiscal year exceeds the sum of any and all amounts allocated to school districts for the purposes of this article pursuant to the Budget Act of 1996.

(B) The product of the average amount received per pupil by each eligible school district in the prior fiscal year, and the total statewide average daily attendance for the eligible school districts for the current fiscal year.

(2) Subtract the amount arrived at pursuant to paragraph (1) from the amount appropriated for the purposes of this article for the current fiscal year and any amounts allocated by the superintendent for the purposes of this section pursuant to paragraph (2) of subdivision (c) of Section 53091.

(b) The statewide target amount per unit of average daily attendance shall be the greater of twenty-five dollars ($25) or .78 percent of the statewide average revenue limit per unit of average daily attendance reported for the second principal apportionment for all types and sizes of school districts for the current fiscal year.

(c) To determine whether a school district is eligible for an equalization adjustment perform the following computations:

(1) Multiply the amount received per unit of average daily attendance reported for the second principal apportionment in the prior fiscal year by the average daily attendance reported for the second principal apportionment for the current fiscal year.

(2) Multiply the amount determined pursuant to subdivision (b) by the average daily attendance reported for the second principal apportionment for the school district for the current fiscal year.

(3) Compare the amounts arrived at pursuant to paragraphs (1) and (2). If paragraph (1) is equal to or greater than paragraph (2) then the school district is not eligible for an equalization adjustment. If paragraph (1) is less than paragraph (2) then the school district is eligible for an equalization adjustment.

(d) To determine the amount of equalization funding for school districts eligible under subdivision (c), make the following computation:

(1) Determine the school district's funding per unit of average daily attendance pursuant to Section 53082, excluding any current year equalization.

(2) Calculate the statewide average amount per unit of average daily attendance received by school districts pursuant to paragraph (1).

(3) For each eligible school district, subtract the funding allocated per unit of average daily attendance for the current fiscal year in paragraph (1) from the current year statewide average calculated in paragraph (2). If the difference is greater than zero the difference will have first priority on equalization funding.

(4) Multiply the difference in paragraph (3) by the school district's average daily attendance for the current year.

(5) Determine the statewide total of the amounts calculated in paragraph (4).

(6) If the statewide total in paragraph (5) exceeds the funding available for equalization determined pursuant to subdivision (a), divide the statewide sum calculated pursuant to paragraph (5) by the total funding available for equalization determined pursuant to subdivision (a).

(7) Multiply the percentage calculated in paragraph (6) by the positive differences identified in paragraph (3).

(8) Multiply the amount in paragraph (7) by the school district's average daily attendance in the current year. This amount represents the school district's first equalization adjustment.

(e) To the extent that funds are available after implementing subdivision (d), the remaining equalization funds shall be allocated to districts eligible pursuant to subdivision (c) as follows:

(1) Add the amount determined in paragraph (1) of subdivision (d) to the amount, if any, calculated pursuant to paragraph (7) of subdivision (d).

(2) Subtract the sum determined in paragraph (1) from the target rate established in subdivision (b).

(3) Multiply the positive difference calculated in paragraph (2), if any, by the school district's average daily attendance reported for the second principal apportionment for the current fiscal year.

(4) Determine the state total of the amounts calculated pursuant to paragraph (3).

(5) Subtract the statewide total calculated pursuant to paragraph (4) from the funding available for equalization as determined in subdivision (a).

(6) Compare the amounts determined pursuant to paragraphs (4) and (5). If the amount determined in paragraph (4) is less than or equal to the amount calculated in paragraph (5), the product calculated in paragraph (3) shall be added to the amount, if any, calculated in paragraph (8) of subdivision (d). The resulting sum represents the total equalization adjustment. If the amount in

paragraph (4) exceeds the amount in paragraph (5), the total equalization adjustment shall be calculated as follows:

(A) Divide the amount determined in paragraph (5) by the amount calculated in paragraph (4).

(B) Multiply the percentage derived in subparagraph (A) by the amount in paragraph (3).

(C) Add the amount determined in subparagraph (B) to the amount pursuant to paragraph (8) of subdivision (d).

(f) If any of the amount available for equalization, as calculated pursuant to subdivision (a), remains after the superintendent has allocated equalization adjustments to each eligible school district pursuant to subdivisions (d) and (e), the superintendent shall allocate an equal amount per unit of average daily attendance, of that remainder to each school district in the state.

SEC. 18. Section 60352 of the Education Code is amended to read:

60352. A school district may apply to the state board for funding for the purchase of a complete set of core reading program instructional materials pursuant to this article.

(a) Except as provided in subdivision (b), each school district shall expend funds received pursuant to this article for the sole purpose of purchasing core reading program instructional materials for pupils enrolled in kindergarten and grades 1 to 3, inclusive, that meet the following requirements:

(1) The instructional materials have been adopted by the state board in 1996.

(2) The instructional materials meet the requirements of Section 60200.4.

(3) The instructional materials include, but are not necessarily limited to, phonemic awareness, systematic explicit phonics, and spelling patterns, accompanied by reading material that provides practice in the lesson being taught.

(b) A school district may expend up to 5 percent of the amounts received pursuant to this article to acquire independent reading books for pupils enrolled in grades 1 to 4, inclusive, for the purpose of stocking school or classroom libraries.

(c) Each school district that receives funds pursuant to this chapter shall purchase the core reading instructional materials on or before September 30, 1997, except that the state board may extend the last date to purchase materials to not later than September 30, 1998, if in a public hearing the governing board adopts a resolution requesting that extension and stating the reasons therefor. In granting a request for an extension pursuant to this subdivision, the state board shall prescribe the last date that core reading instructional materials may be purchased, but in no event shall the state board authorize a date of extension later than September 30, 1998. It is the intent of the Legislature that the state board authorize extensions to governing boards that have demonstrated that they are unable to meet the deadline set forth in this subdivision because of

factors out of their control, including, but not limited to, insufficient time to evaluate and field test the state board-approved materials.

(d) If the governing board establishes, to the satisfaction of the state board, that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that governing board to use the funds received pursuant to this article to purchase instructional materials as specified by the state board, in accordance with standards and procedures established by the state board, and that meet the requirements of Section 60200.4 and include, but are not necessarily limited to, phonemic awareness, systematic explicit phonics, and spelling patterns, accompanied by reading material that provides practice in the lesson being taught. It is the intent of the Legislature that any request made by governing boards pursuant to this subdivision prior to August 31, 1996, be expedited by the state board.

(e) Each governing board shall certify to the State Department of Education that the amounts received pursuant to this chapter have been expended as required by this chapter. The governing board shall certify at a public hearing of the board that each pupil enrolled in kindergarten and grades 1 to 3, inclusive, has been furnished a complete set of core reading program instructional materials that meets the requirements of this section.

SEC. 19. Section 60650.5 is added to the Education Code, to read:

60650.5. The Superintendent of Public Instruction for a fee shall make the Golden State Examination available to any private school that requests the examination. The fee shall be calculated by the State Department of Education, and shall be in an amount that reimburses the state for all of the state's costs for making the examination available to the private school. The fee collected from a private school shall include, but not be limited to, the costs of developing, printing, distributing, and scoring the examinations, and the costs for reporting examination results. The fee collected from a private school shall be deposited in the State Treasury to the credit of the fund or funds against which the costs were charged.

SEC. 20. Section 13 of Chapter 200 of the Statutes of 1996 is amended to read:

Sec. 13. (a) The sum of three million dollars ($3,000,000) is hereby appropriated from the General Fund, to be transferred by the Controller, to the School Safety Account in the General Fund, which account is continuously appropriated, for allocation by the Superintendent of Public Instruction pursuant to Section 32235 of the Education Code.

(b) If the amount in the General Fund to be transferred to the School Safety Account pursuant to Section 32235 of the Education Code exceeds three million dollars ($3,000,000), those funds are hereby appropriated in augmentation of the appropriation in subdivision (a), except in no event shall that amount exceed ten

million dollars ($10,000,000) as set forth in paragraph (2) of subdivision (b) of Section 11489 of the Health and Safety Code.

SEC. 21. Section 25 of Chapter 204 of the Statutes of 1996 is amended to read:

Sec. 25. (a) The sum of two hundred million dollars ($200,000,000) is hereby appropriated from the General Fund for transfer to Section A of the State School Fund for allocation to school districts and county offices of education on the basis of an equal amount per unit of average daily attendance, as defined in subdivision (b) of Section 42238.5 of the Education Code, and including average daily attendance which results in apportionments of state aid to county superintendents of schools pursuant to Section 2558 of the Education Code, and including average daily attendance used to compute funding for small school districts pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24 of the Education Code, reported for the second principal apportionment for the 1995–96 fiscal year pursuant to Section 41601 of the Education Code. That allocation shall be used solely for instructional materials, library resources, deferred maintenance, education technology, or any other nonrecurring costs.

(b) Prior to the use of funds appropriated in subdivision (a), the governing board of the school district or the county board of education shall hold a public hearing or hearings at which time the governing board of the school district or the county board of education shall report on the needs of, and resources for, instructional materials, library resources, deferred maintenance, education technology, and any other nonrecurring costs in the district or county office of education. The governing board of the school district or county board of education shall encourage the participation of parents, teachers, members of the community interested in the affairs of the school district or county office of education, and collective bargaining unit leaders. The board shall provide 10 days notice of the public hearing or hearings. The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places. The governing board of the school district or county board of education may include the hearing specified in this section as part of any regularly scheduled meeting.

(c) Prior to the use of funds appropriated in subdivision (a) for nonrecurring costs related to employee compensation, the governing board of the school district or the county board of education shall hold a public hearing or hearings, in addition to, and no less than, 10 days subsequent to the hearing or hearings provided in subdivision (b), at which time the board shall report on the needs of and resources for instructional materials, library resources, deferred maintenance, and education technology. The governing board of the school district or county board of education shall encourage the participation of parents, teachers, members of the community interested in the affairs of the school district or county

office of education, and collective bargaining unit leaders. The governing board of the school district or county board of education shall provide 10 days notice of the public hearing or hearings. The notice shall contain the time, place, and purpose of the hearing. The governing board of the school district or county board of education may include the hearing specified in this section as part of any regularly scheduled meeting.

(d) The appropriation made in subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202, for the 1995–96 fiscal year, and "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 that fiscal year, for purposes of Section 8 of Article XVI of the California Constitution for the 1995–96 fiscal year.

SEC. 22. Item 6110-001-0001 of Section 2.00 of Chapter 162 of the Statutes of 1996 is amended to read:

6110-001-0001--Forsupport of Department of Education		31,247,000
Schedule:		
(a) 10-Instruction	44,132,800	
(b) 20-Instructional Support	36,424,452	
(c) 30-Special Programs	28,970,000	
(d) 41.00-Executive Management and Special Services	8,793,000	
(e) 41.01-State Board of Education	1,090,000	
(f) 42.01-Department Management and Special Services	24,935,000	
(g) 42.02-Distributed Department Management and Special Services	—24,935,000	
(h) Reimbursements	—13,498,000	
(i) Amount payable from Federal Trust Fund (Item 6110-001-0890)	—74,665,252	
Provisions:		
1. An amount equal to or greater than the amount appropriated in Schedule (e) shall be available for support of the State Board of Education.		
2. Notwithstanding Sections 33190 and 51219 of the Education Code, or any other provision of		

law, the State Department of Education shall expend no funds to prepare (a) a statewide summary of student performance on school district proficiency assessments or (b) a compilation of information on private schools with five or fewer students.

3. Of the amount appropriated by this item, $74,000 shall be expended for staff in the department's Program Evaluation and Research Division to (a) review and approve studies and program evaluations and (b) assist in contract management.
4. Of the funds appropriated by this item, $150,000 is for the purpose of administering the Demonstration of Restructuring in Public Education authorized by Chapter 9 (commencing with Section 58900) of Part 31 of the Education Code.
5. Of the funds appropriated in this item, $90,000 shall be available only for Educational Technology support services pursuant to Section 51874 of the Education Code and for the expenses incurred by members of the Education Council for Technology in Learning in carrying out their duties.
6. $50,000 of the funds appropriated in this item are available, under oversight of the Legislative Analyst, for administration of an independent evaluation of education restructuring that addresses, to the extent permitted by available funding, those issues specified in Section 58920 of the Education Code. Up to $1,000 of this amount may be transferred to, and expended by, the Office of the Legislative Analyst, and up to $1,000 may be expended by the State Department of Education to pay for overhead costs associated with supervision of a contract with an evaluator. In addition, the State Department of Education may secure and expend private funding for the expansion of the state-funded evaluation under the condition that these funds shall be subject to oversight by the Legislative Analyst, as specified in Provision 7.
7. For the purposes of the school restructuring evaluation, the State Department of Education shall sign a contract with an independent evaluator under the oversight of

the Legislative Analyst. The selection of the contractor shall be made pursuant to Section 58921 of the Education Code. The use, encumbrance, and payment of evaluation funds, from all sources, shall be made in strict accordance with the decisions of the Legislative Analyst, or his or her designee. In the review of proposals and in the awarding and review of any contract pursuant to Provision 6 of this item, Division 2 (commencing with Section 1100) of the Public Contract Code and associated regulations shall not be applicable, and Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and associated regulations shall not be applicable. Any contract shall be awarded, however, through a competitive bidding process.

8. Notwithstanding any other provision of law, of the funds appropriated in this item, $2,500,000 shall be used to provide technical assistance and administrative support to the Healthy Start Program and $240,000 shall be used to provide technical assistance and administrative support for the Teen Pregnancy Prevention and Intervention Program (Art. 1 (commencing with Sec. 8800) Ch. 5, Part 6, Ed. C.).
9. Of the funds appropriated by this item, $300,000 and two positions shall be available only for planning and implementation of the focus schools program authorized by Chapter 6.1 (commencing with Section 52050) of Part 28 of the Education Code.
10. Funds appropriated by this item may be expended or encumbered to make one or more payments under a personal services contract of a visiting educator pursuant to Section 19050.8 of the Government Code, a long-term special consultant services contract, or an employment contract between an entity that is not a state agency and a person who is under the direct or daily supervision of a state agency, only if all of the following conditions are met:
    (a) The person providing service under the contract provides full financial disclosure

to the Fair Political Practices Commission in accordance with the rules and regulations of the commission.

(b) The service provided under the contract does not result in the displacement of any represented civil service employee.

(c) The rate of compensation for salary and health benefits for the person providing service under the contract does not exceed by more 10 percent the current rate of compensation for salary and health benefits determined by the Department of Personnel Administration for civil service personnel in a comparable position. The payment of any other compensation or any reimbursement for travel or per diem expenses shall be in accordance with the State Administrative Manual and the rules and regulations of the State Board of Control.

11. Of the funds appropriated in this item, $2,373,000 is for the purposes of a pupil testing program, and shall be available for expenditure only as specified in a plan proposed by the Superintendent of Public Instruction subject to approval by the Department of Finance. Approval of the Department of Finance may not be effective sooner than 30 days after notification to the Chairperson of the Joint Legislative Budget Committee.
12. Of the funds appropriated by this item, $150,000 shall be used for the Gang Risk Intervention Program (Ch. 5 (commencing with Sec. 58700), Pt. 31, Ed. C.).
13. The funds appropriated in Schedule (e) shall be for the support of the State Board of Education and shall be directed to meet the policy priorities of its members.
14. The funds appropriated by this item may not be expended for any REACH program.
15. The funds appropriated by this item may not be expended for the development or dissemination of program advisories, including, but not limited to, program advisories on the subject areas of reading, writing, and mathematics, unless explicitly authorized by the State Board of Education.

This provision does not preclude the department staff from preparing draft advisories for consideration by the State Board. However, it does preclude the dissemination of proposed final draft advisories unless expressly authorized by the State Board.

SEC. 23. Item 6110-231-0001 of Section 2.00 of Chapter 162 of the Statutes of 1996 is amended to read:

6110-231-0001—For local assistance, Department of Education, (Proposition 98), for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts and county offices of education for the purpose of the Proposition 98 educational programs funded in Item 6110-230-0001 135,633,000

Provisions:

1. Of the funds appropriated by this item, 50 percent shall be allocated to all school districts and county offices of education in the state on the basis of an equal amount per unit of average daily attendance for the Proposition 98 educational programs funded in Item 6110-230-0001.
2. Of the funds appropriated by this item, 50 percent shall be transferred to Item 6110-230-0001, and shall be allocated to fund each of the Proposition 98 educational programs funded in Item 6110-230-0001, to be apportioned based on the proportion of the state funding allocated for that program for the 1995-96 fiscal year to the state funding allocated for all of the Proposition 98 Educational programs funded in Item 6110-230-0001 for that fiscal year. The funding allocated pursuant to this provision is in lieu of cost−of−living adjustments and enrollment growth for the affected programs for the 1995−96 fiscal year.

SEC. 24. Item 6110-233-0001 of Section 2.00 of Chapter 162 of the Statutes of 1996 is amended to read:

6110-233-0001—For local assistance, Department of Education (Proposition 98), for transfer to Item 6110-230-0001, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies receiving funding under Item 6110-230-0001 for the purposes of Proposition 98 educational programs funded in Item 6110-230-0001 102,820,000

Provisions:

1. The funds appropriated by this item are for the purpose of providing cost−of−living adjustments and enrollment growth funding, to be distributed to each program that is funded under Item 6100-230-0001 in an amount that is proportionate to the base funding level of the program in the 1995-96 fiscal year.

SEC. 25. (a) Notwithstanding Section 41972 of the Education Code or any other provision of law, the unencumbered balance of the funds appropriated by Item 6110-103-001 of Section 2.00 of the Budget Act of 1994, as set forth in Chapter 139 of the Statutes of 1994, is hereby reappropriated to the Superintendent of Public Instruction, in augmentation of the following:

(1) Schedule (d) of Item 6110-101-001 of Section 2.00 of the Budget Act of 1989, as set forth in Chapter 93 of the Statutes of 1989, for allocation for the 1989–90 fiscal year to fund apprenticeship education programs pursuant to Article 8 (commencing with Section 8150) of Chapter 1 of Part 6 of the Education Code.

(2) Schedule (d) of Item 6110-101-001 of Section 2.00 of the Budget Act of 1990, as set forth in Chapter 467 of the Statutes of 1990, for allocation for the 1990–91 fiscal year to fund apprenticeship education programs pursuant to Article 8 (commencing with Section 8150) of Chapter 1 of Part 6 of the Education Code.

(b) Funds appropriated by this section shall be allocated pursuant to paragraphs (1) and (2) of subdivision (a) to reimburse school districts for disbursements made to apprenticeship programs that have not been reimbursed by the Superintendent of Public Instruction. The funds shall first be allocated pursuant to paragraph (1) of subdivision (a). Any funds remaining after allocation to paragraph (1) of subdivision (a) shall be allocated pursuant to paragraph (2) of subdivision (a).

SEC. 26. (a) The sum of one million two hundred seventy-five thousand dollars ($1,275,000) is hereby appropriated from the General Fund for transfer to Section A of the State School Fund to provide funding for the deficiency in the 1995–96 fiscal year for the child nutrition program.

(b) For the purposes 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 school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1994–95 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 1994–95 fiscal year.

SEC. 27. Notwithstanding Sections 54902, 54902.1, 54903, and 54903.1 of the Government Code, any change of boundaries of a union school district or formation of a unified school district pursuant to Part 21 (commencing with Section 35000) of the Education Code, as the result of a unification election held on June 6, 1995, shall be effective for assessment and taxation purposes for the 1996–97 fiscal year if the required statements and map or plat are filed with, and processed by, the State Board of Equalization and transmitted to the Monterey County Auditor's office no later than the end of the business day on August 30, 1996.

SEC. 28. Notwithstanding Sections 35530, 35532, 35533, and 35534 of the Education Code, or any other provision of the Education Code, in any unified school district created or whose boundaries are changed, the creation or change shall be effective for all purposes in connection with the issuance of bonds of the resulting unified school district as of July 1, 1996, and all acts and proceedings heretofore taken by the governing board of the unified school district or by the board of supervisors of the county in which the unified school district is located, or by any person, public officer, board or agency on behalf of either the governing board or the board of supervisors, under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of the unified school district, are hereby authorized, confirmed, validated, and declared legally effective.

SEC. 29. Sections 14, 15, 16, and 17 shall become operative only if Assembly Bill 2769 of the 1995–96 Regular Session is enacted and adds Sections 53073 and 53083 to the Education Code. If Assembly Bill 2769 of the 1995–96 Regular Session is not enacted, then Sections 14, 15, 16, and 17 of this act shall not become operative.

SEC. 30. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the bonds of the Soledad Unified School District to be issued and a tax levied in the 1996–97 fiscal year for the payment thereof, and to effectively and efficiently implement the fiscal

changes proposed by this act in a timely manner, it is necessary that this act take effect immediately.

CHAPTER 1159

An act to amend Sections 116.340, 116.360, 116.370, 116.390, 116.570, 116.610, 116.820, 116.910, 405.22, 488.395, and 700.070 of, and to add Section 1985.7 to, the Code of Civil Procedure, and to amend Sections 68150, 68151, 68152, and 68616 of the Government Code, relating to courts.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 116.340 of the Code of Civil Procedure is amended to read:

116.340. (a) Service of the claim and order on the defendant may be made by any one of the following methods:

(1) The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt.

(2) The plaintiff may cause a copy of the claim and order to be delivered to the defendant in person.

(3) The plaintiff may cause service of a copy of the claim and order to be made by substituted service as provided in subdivision (a) or (b) of Section 415.20 without the need to attempt personal service on the defendant. For these purposes, substituted service as provided in subdivision (b) of Section 415.20 may be made at the office of the sheriff or marshal who shall deliver a copy of the claim and order to any person authorized by the defendant to receive service, as provided in Section 416.90, who is at least 18 years of age, and thereafter mailing a copy of the claim and order to the defendant's usual mailing address.

(4) The clerk may cause a copy of the claim to be mailed, the order to be issued, and a copy of the order to be mailed as provided in subdivision (b) of Section 116.330.

(b) Service of the claim and order on the defendant shall be completed at least 10 days before the hearing date if the defendant resides within the county in which the action is filed, or at least 15 days before the hearing date if the defendant resides outside the county in which the action is filed.

(c) Service by the methods described in subdivision (a) shall be deemed complete on the date that the defendant signs the mail return receipt, on the date of the personal service, as provided in Section 415.20, or as established by other competent evidence, whichever applies to the method of service used.

(d) Service shall be made within this state, except as provided in subdivisions (e) and (f).

(e) The owner of record of real property in California who resides in another state and who has no lawfully designated agent in California for service of process may be served by any of the methods described in this section if the claim relates to that property.

(f) A nonresident owner or operator of a motor vehicle involved in an accident within this state may be served pursuant to the provisions on constructive service in Sections 17450 to 17461, inclusive, of the Vehicle Code without regard to whether the defendant was a nonresident at the time of the accident or when the claim was filed. Service shall be made by serving both the Director of the California Department of Motor Vehicles and the defendant, and may be made by any of the methods authorized by this chapter or by registered mail as authorized by Section 17454 or 17455 of the Vehicle Code.

(g) If an action is filed against a principal and his or her guaranty or surety pursuant to a guarantor or suretyship agreement, a reasonable attempt shall be made to complete service on the principal. If service is not completed on the principal, the action shall be transferred to the court of appropriate jurisdiction.

SEC. 2. Section 116.360 of the Code of Civil Procedure is amended to read:

116.360. (a) The defendant may file a claim against the plaintiff in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220 and 116.231. The claim need not relate to the same subject or event as the plaintiff's claim.

(b) The defendant's claim shall be filed and served in the manner provided for filing and serving a claim of the plaintiff under Sections 116.330 and 116.340.

(c) The defendant shall cause a copy of the claim and order to be served on the plaintiff at least five days before the hearing date, unless the defendant was served 10 days or less before the hearing date, in which event the defendant shall cause a copy of the defendant's claim and order to be served on the plaintiff at least one day before the hearing date.

SEC. 3. Section 116.370 of the Code of Civil Procedure is amended to read:

116.370. (a) Venue in small claims actions shall be the same as in other civil actions.

(b) A defendant may challenge venue by writing to the court and mailing a copy of the challenge to each of the other parties to the action, without personally appearing at the hearing.

(c) In all cases, including those in which the defendant does not either challenge venue or appear at the hearing, the court shall inquire into the facts sufficiently to determine whether venue is proper, and shall make its determination accordingly.

(1) If the court determines that the action was not commenced in the proper venue, the court, on its own motion, shall dismiss the action without prejudice unless all defendants are present and agree that the action may be heard.

(2) If the court determines that the action was commenced in the proper venue, the court may hear the case if all parties are present. If the defendant challenged venue and all parties are not present, the court shall postpone the hearing for at least 15 days and shall notify all parties by mail of the court's decision and the new hearing date, time, and place.

SEC. 4. Section 116.390 of the Code of Civil Procedure is amended to read:

116.390. (a) If a defendant has a claim against a plaintiff that exceeds the jurisdictional limits stated in Sections 116.220 and 116.231, and the claim relates to the contract, transaction, matter, or event which is the subject of the plaintiff's claim, the defendant may commence an action against the plaintiff in a court of competent jurisdiction and request the small claims court to transfer the small claims action to that court.

(b) The defendant may make the request by filing with the small claims court in which the plaintiff commenced the action, at or before the time set for the hearing of that action, a declaration stating the facts concerning the defendant's action against the plaintiff with a true copy of the complaint so filed by the defendant against the plaintiff and the sum of one dollar ($1) for a transmittal fee. The defendant shall cause a copy of the declaration and complaint to be personally delivered to the plaintiff at or before the time set for the hearing of the small claims action.

(c) In ruling on a motion to transfer, the small claims court may do any of the following: (1) render judgment on the small claims case prior to the transfer; (2) not render judgment and transfer the small claims case; (3) refuse to transfer the small claims case on the grounds that the ends of justice would not be served. If the small claims action is transferred prior to judgment, both actions shall be tried together in the transferee court.

(d) When the small claims court orders the action transferred, it shall transmit all files and papers to the transferee court.

(e) The plaintiff in the small claims action shall not be required to pay to the clerk of the transferee court any transmittal, appearance, or filing fee unless the plaintiff appears in the transferee court, in which event the plaintiff shall be required to pay the filing fee and any other fee required of a defendant in the transferee court. However, if the transferee court rules against the plaintiff in the action filed in that court, the court may award to the defendant in that action the costs incurred as a consequence of the transfer, including attorney's fees and filing fees.

SEC. 5. Section 116.570 of the Code of Civil Procedure is amended to read:

116.570. (a) Any party may submit a written request for postponement of a hearing date.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

(3) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(4) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b) If service of the claim and order upon the defendant is not completed within the number of days before the hearing date required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the court shall postpone the hearing for at least 15 days. If a postponement is ordered under this subdivision, the clerk shall promptly notify all parties by mail of the new hearing date, time, and place.

(c) Nothing in this section limits the inherent power of the court to order postponements of hearings in appropriate circumstances.

(d) A fee of ten dollars ($10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after timely service pursuant to subdivision (b) of Section 116.340 has been made upon the defendant.

SEC. 6. Section 116.610 of the Code of Civil Procedure is amended to read:

116.610. (a) The small claims court shall give judgment for damages, or equitable relief, or both damages and equitable relief, within the jurisdictional limits stated in Sections 116.220 and 116.231, and may make such orders as to time of payment or otherwise as the court deems just and equitable for the resolution of the dispute.

(b) The court may, at its discretion or on request of any party, continue the matter to a later date in order to permit and encourage the parties to attempt resolution by informal or alternative means.

(c) The judgment shall include a determination whether the judgment resulted from a motor vehicle accident on a California highway caused by the defendant's operation of a motor vehicle, or by the operation by some other individual, of a motor vehicle registered in the defendant's name.

(d) If the defendant has filed a claim against the plaintiff, or if the judgment is against two or more defendants, the judgment, and the statement of decision if one is rendered, shall specify the basis for and the character and amount of the liability of each of the parties,

including, in the case of multiple judgment debtors, whether the liability of each is joint or several.

(e) If specific property is referred to in the judgment, whether it be personal or real, tangible or intangible, the property shall be identified with sufficient detail to permit efficient implementation or enforcement of the judgment.

(f) In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

(g) The prevailing party is entitled to the costs of the action, including the costs of serving the order for the appearance of the defendant.

(h) When the court renders judgment, the clerk shall promptly deliver or mail notice of entry of the judgment to the parties, and shall execute a certificate of personal delivery or mailing and place it in the file.

(i) The notice of entry of judgment shall be on a form approved or adopted by the Judicial Council.

SEC. 7. Section 116.820 of the Code of Civil Procedure is amended to read:

116.820. (a) The judgment of a small claims court may be enforced as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of judgments of other courts. A judgment of the superior court after a hearing on appeal, and after transfer to the small claims court under subdivision (d) of Section 116.780, may be enforced like other judgments of the small claims court, as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of judgments of other courts.

(b) Fees as provided in Sections 26828, 26830, and 26834 of the Government Code shall be charged and collected by the clerk for the issuance of a writ of execution, an order of examination of a judgment debtor, or an abstract of judgment.

(c) The prevailing party in any action subject to this chapter is entitled to the costs of enforcing the judgment and accrued interest.

SEC. 8. Section 116.910 of the Code of Civil Procedure is amended to read:

116.910. (a) Except as provided in this chapter (including, but not limited to, Section 116.230), no fee or charge shall be collected by any officer for any service provided under this chapter.

(b) All fees collected under this chapter shall be deposited with the treasurer of the city and county or county in whose jurisdiction the court is located.

(c) Six dollars ($6) of each fifteen dollar ($15) fee and fourteen dollars ($14) of each thirty dollar ($30) fee charged and collected under subdivision (a) of Section 116.230 shall be deposited by each county in a special account. Of the money deposited in this account:

(1) In counties with a population of less than 4,000,000, a minimum of 50 percent shall be used to fund the small claims adviser service described in Section 116.940. The remainder of these funds shall be used for court and court-related programs. Records of these moneys shall be available for inspection by the public on request.

(2) In counties with a population of at least 4,000,000, not less than five hundred thousand dollars ($500,000) shall be used to fund the small claims adviser service described in Section 116.940. That amount shall be increased each fiscal year by an amount equal to the percentage increase in revenues derived from small claims court filing fees over the prior fiscal year. The remainder of these funds shall be used for court and court-related programs. Records of these moneys shall be available for inspection by the public on request.

(d) This section and Section 116.940 shall not be applied in any manner that results in a reduction of the level of services, or the amount of funds allocated for providing the services described in Section 116.940, that are in existence in each county during the fiscal year 1989–90. Nothing in this section shall preclude the county from procuring other funding, including state court block grants, to comply with the requirements of Section 116.940.

SEC. 9. Section 405.22 of the Code of Civil Procedure is amended to read:

405.22. Except in actions subject to Section 405.6, the claimant shall, prior to recordation of the notice, cause a copy of the notice to be mailed, by registered or certified mail, return receipt requested, to all known addresses of the parties to whom the real property claim is adverse and to all owners of record of the real property affected by the real property claim as shown by the latest county assessment roll. If there is no known address for service on an adverse party or owner, then as to that party or owner a declaration under penalty of perjury to that effect shall be recorded instead of the proof of service required above, and the service on that party or owner shall not be required. Immediately following recordation, a copy of the notice shall also be filed with the court in which the action is pending. Service shall also be made immediately and in the same manner upon each adverse party later joined in the action.

SEC. 10. Section 488.395 of the Code of Civil Procedure is amended to read:

488.395. Except as specified in subdivision (e) and as provided by Sections 488.325 and 488.405:

(a) To attach farm products or inventory of a going business in the possession or under the control of the defendant, the levying officer shall place a keeper in charge of the property for the period prescribed by subdivisions (b) and (c). During the keeper period, the business may continue to operate in the ordinary course of business provided that all sales are final and are for cash or its equivalent. For the purpose of this subdivision, a check is the equivalent of cash. The levying officer is not liable for accepting

payment in the form of a cash equivalent. The keeper shall take custody of the proceeds from all sales unless otherwise directed by the plaintiff.

(b) Subject to subdivision (c), the period during which the business may continue to operate under the keeper is:

(1) Ten days, if the defendant is a natural person and the writ of attachment has been issued ex parte pursuant to Article 3 (commencing with Section 484.510) of Chapter 4 or pursuant to Chapter 5 (commencing with Section 485.010).

(2) Two days, in cases not described in paragraph (1).

(c) Unless some other disposition is agreed upon by the plaintiff and the defendant, the levying officer shall take the farm products or inventory into exclusive custody at the earlier of the following times:

(1) At any time the defendant objects to placement of a keeper in charge of the business.

(2) At the conclusion of the applicable period prescribed by subdivision (b).

(d) A defendant described in paragraph (1) of subdivision (b) may claim an exemption pursuant to subdivision (b) of Section 487.020 by following the procedure set forth in subdivision (c) of Section 482.100 except that the requirement of showing changed circumstances under subdivision (a) of Section 482.100 does not apply. Upon a showing that the property is exempt pursuant to subdivision (b) of Section 487.020, the court shall order the release of the exempt property and may make such further order as the court deems appropriate to protect against frustration of the collection of the plaintiff's claim. The order may permit the plaintiff to attach farm products or inventory of the going business and proceeds or after-acquired property, or both, by filing pursuant to Section 488.405 and may provide reasonable restrictions on the disposition of the property previously attached.

(e) This section does not apply to the placement of a keeper in a business for the purpose of attaching tangible personal property consisting solely of money or equivalent proceeds of sales, which shall be conducted in the same manner as provided in Section 700.070.

SEC. 11. Section 700.070 of the Code of Civil Procedure is amended to read:

700.070. To levy upon tangible personal property of a going business in the possession or under the control of the judgment debtor, the levying officer shall comply with Section 700.030, except to the extent that the judgment creditor instructs that levy be made in the following manner:

(a) The levying officer shall place a keeper in charge of the business for the period requested by the judgment creditor. During the period, the business may continue to operate in the ordinary course of business provided that all sales are final and are for cash or its equivalent. For the purpose of this subdivision, a check is the

equivalent of cash. The levying officer is not liable for accepting payment in the form of a cash equivalent. The keeper shall take custody of the proceeds from all sales unless otherwise directed by the judgment creditor.

(b) The levying officer shall take the tangible personal property into exclusive custody at the earliest of the following times:

(1) At any time the judgment debtor objects to placement of a keeper in charge of the business.

(2) At any time when requested by the judgment creditor.

(3) At the end of 10 days from the time the keeper is placed in charge of the business.

(c) Where a keeper is placed in a business for the purpose of taking into custody tangible personal property consisting solely of money or equivalent proceeds of sales, the provisions of subdivision (b) shall not apply, and the levying officer shall take such property into exclusive custody at the end of each daily keeper period.

SEC. 12. Section 1985.7 is added to the Code of Civil Procedure, to read:

1985.7. When a medical provider fails to comply with Section 1158 of the Evidence Code, in addition to any other available remedy, the demanding party may apply to the court for an order to show cause why the records should not be produced.

Any order to show cause issued pursuant to this section shall be served upon respondent in the same manner as a summons. It shall be returnable no sooner than 20 days after issuance unless ordered otherwise upon a showing of substantial hardship. The court shall impose monetary sanctions pursuant to Section 1158 of the Evidence Code unless it finds that the person subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

SEC. 13. Section 68150 of the Government Code is amended to read:

68150. (a) Trial court records may be preserved in any form of communication or representation, including optical, electronic, magnetic, micrographic, or photographic media or other technology capable of accurately producing or reproducing the original record according to minimum standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management.

Specifications for electronic recordings made as the official record of the oral proceedings shall be governed by the California Rules of Court.

(b) No additions, deletions, or changes shall be made to the content of the record. The records shall be indexed for convenient access.

(c) A copy of the record preserved or reproduced according to subdivisions (a) and (b) shall be deemed the original court record and may be certified as a correct copy of the original record.

(d) A court record preserved or reproduced in accordance with subdivisions (a) and (b) shall be stored in a manner and in a place that reasonably assures its preservation against loss, theft, defacement, or destruction for the prescribed retention period under Section 68152. Electronic recordings made as the official record of the oral proceedings shall not require a backup copy unless otherwise specified in the California Rules of Court.

(e) The court record that was reproduced in accordance with subdivisions (a) and (b) may be disposed of in accordance with the procedure under Section 68153, unless it is subject to subdivision (f).

(f) The following court records may be preserved or reproduced under subdivisions (a) and (b) but shall also be preserved on paper, microfilm, or in another form of communication or representation approved by and in accordance with standards that are defined as archival by the American National Standards Institute for the duration of the record's retention period:

(1) The comprehensive historical and sample superior court records preserved for research under the California Rules of Court.

(2) Court records that are preserved permanently.

Court records that must be preserved longer than 10 years but not permanently may be reproduced on media other than paper or microfilm using technology authorized under subdivisions (a) and (b). However the records shall be reproduced before the expiration of their estimated lifespan for the medium in which they are stored as specified in subdivision (g).

(g) Instructions for access to data stored on a medium other than paper shall be documented. Each court shall conduct a periodic review of the media in which the court records are stored to assure that the storage medium is not obsolete and that current technology is capable of accessing and reproducing the records. The court shall reproduce records before the expiration of their estimated lifespan for the medium in which they are stored according to minimum standards and guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management.

(h) Court records preserved or reproduced under subdivisions (a) and (b) shall be made reasonably accessible to all members of the public for viewing and duplication as would the paper records. Reasonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court.

SEC. 14. Section 68151 of the Government Code is amended to read:

68151. The following definitions apply to this chapter:

(a) "Court record" shall consist of the following:

(1) All filed papers and documents in the case folder; but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created.

(2) Administrative records filed in an action or proceeding, depositions, paper exhibits, transcripts, including preliminary hearing transcripts, and tapes of electronically recorded proceedings filed, lodged, or maintained in connection with the case, unless disposed of earlier in the case pursuant to law.

(3) Other records listed under subdivision (j) of Section 68152.

(b) "Notice of destruction and no transfer" means that the clerk has given notice of destruction of the superior court records open to public inspection, and that there is no request and order for transfer of the records as provided in the California Rules of Court.

(c) "Final disposition of the case" means that an acquittal, dismissal, or order of judgment has been entered in the case or proceeding, the judgment has become final, and no postjudgment motions or appeals are pending in the case or for the reviewing court upon the mailing of notice of the issuance of the remittitur.

In a criminal prosecution, the order of judgment shall mean imposition of sentence, entry of an appealable order (including, but not limited to, an order granting probation, commitment of a defendant for insanity, or commitment of a defendant as a narcotics addict appealable under Section 1237 of the Penal Code), or forfeiture of bail without issuance of a bench warrant or calendaring of other proceedings.

(d) "Retain permanently" means that the original court records shall never be transferred or destroyed.

SEC. 15. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

(c) Other civil actions and proceedings, as follows:

(1) Except as otherwise specified: 10 years.

(2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.

(3) Domestic violence: same period as duration of the restraining or other orders and any renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

(5) Family law, except as otherwise specified: 30 years.

(6) Harassment: same period as duration of the injunction and any renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.

(7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.

(8) Paternity: retain permanently.

(9) Petition, except as otherwise specified: 10 years.

(10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

(12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.

(d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.

(2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

(1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.

(2) Felony, except as otherwise specified: 75 years.

(3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.

(4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

(6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: seven years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Infraction, except as otherwise specified: three years.

(11) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

(5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

(1) Conservatorship: 10 years after decree of termination.

(2) Guardianship: 10 years after the age of 18.

(3) Probate, including probated wills, except as otherwise specified: retain permanently.

(i) Court records of the appellate department of the trial court: five years.

(j) Other records.

(1) Applications in forma pauperis: same period as period for retention of the records in the underlying case category.

(2) Arrest warrant: same period as period for retention of the records in the underlying case category.

(3) Bench warrant: same period as period for retention of the records in the underlying case category.

(4) Bond: three years after exoneration and release.

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.

(6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court: retain permanently.

(13) Judgments within the jurisdiction of the municipal and justice court: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of any of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or any interested member of the public for good cause shown and on such terms as are just. No fee shall be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

SEC. 16. Section 68616 of the Government Code, as amended by Section 7 of Chapter 1261 of the Statutes of 1993, is amended to read:

68616. Delay reduction rules shall not require shorter time periods than as follows:

(a) Service of the complaint within 60 days after filing. Exceptions, for longer periods of time, may be granted as authorized by local rule.

(b) Service of responsive pleadings within 30 days after service of the complaint. The parties may stipulate to an additional 15 days. Exceptions, for longer periods of time, may be granted as authorized by local rule.

(c) Time for service of notice or other paper under Sections 1005 and 1013 of the Code of Civil Procedure and time to plead after service of summons under Section 412.20 of the Code of Civil Procedure shall not be shortened except as provided in those sections.

(d) Within 30 days of service of the responsive pleadings, the parties may, by stipulation filed with the court, agree to a single continuance not to exceed 30 days.

It is the intent of the Legislature that these stipulations not detract from the efforts of the courts to comply with standards of timely disposition. To this extent, the Judicial Council shall develop statistics that distinguish between cases involving, and not involving, these stipulations.

(e) No status conference, or similar event, other than a challenge to the jurisdiction of the court, may be required to be conducted sooner than 30 days after service of the first responsive pleadings, or no sooner than 30 days after expiration of a stipulated continuance, if any, pursuant to subdivision (d).

(f) Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall govern discovery, except in arbitration proceedings, and the time periods set forth in that article may not be shortened by local rule.

(g) An order referring an action to arbitration or mediation may be made at any status conference held in accordance with subdivision (e), provided that any arbitration ordered may not commence prior to 210 days after the filing of the complaint, exclusive of the stipulated period provided in subdivision (d). Any mediation ordered pursuant to Section 1775.3 of the Code of Civil Procedure may be commenced prior to 210 days after the filing of the complaint, exclusive of the stipulated period provided in subdivision (d). No rule adopted pursuant to this article may contravene Sections 638 and 639 of the Code of Civil Procedure.

(h) Unnamed (DOE) defendants shall not be dismissed prior to the conclusion of the introduction of evidence at trial, except upon stipulation or motion of the parties.

(i) Notwithstanding Section 170.6 of the Code of Civil Procedure, in direct calendar courts, challenges pursuant to that section shall be exercised within 15 days of the party's first appearance. Master calendar courts shall be governed solely by Section 170.6 of the Code of Civil Procedure.

(j) This section applies to all cases subject to this article which are filed on or after January 1, 1991.

(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 before January 1, 1999, deletes or extends that date.

SEC. 17. Section 68616 of the Government Code, as added by Section 8 of Chapter 1261 of the Statutes of 1993, is amended to read:

68616. Delay reduction rules shall not require shorter time periods than as follows:

(a) Service of the complaint within 60 days after filing. Exceptions, for longer periods of time, may be granted as authorized by local rule.

(b) Service of responsive pleadings within 30 days after service of the complaint. The parties may stipulate to an additional 15 days. Exceptions, for longer periods of time, may be granted as authorized by local rule.

(c) Time for service of notice or other paper under Sections 1005 and 1013 of the Code of Civil Procedure and time to plead after service of summons under Section 412.20 of the Code of Civil Procedure shall not be shortened except as provided in those sections.

(d) Within 30 days of service of the responsive pleadings, the parties may, by stipulation filed with the court, agree to a single continuance not to exceed 30 days.

It is the intent of the Legislature that these stipulations not detract from the efforts of the courts to comply with standards of timely disposition. To this extent, the Judicial Council shall develop statistics that distinguish between cases involving, and not involving, these stipulations.

(e) No status conference, or similar event, other than a challenge to the jurisdiction of the court, may be required to be conducted sooner than 30 days after service of the first responsive pleadings, or no sooner than 30 days after expiration of a stipulated continuance, if any, pursuant to subdivision (d).

(f) Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall govern discovery, except in arbitration proceedings, and the time periods set forth in that article may not be shortened by local rule.

(g) No case may be referred to arbitration prior to 210 days after the filing of the complaint, exclusive of the stipulated period provided for in subdivision (d). No rule adopted pursuant to this

article may contravene Sections 638 and 639 of the Code of Civil Procedure.

(h) Unnamed (DOE) defendants shall not be dismissed prior to the conclusion of the introduction of evidence at trial, except upon stipulation or motion of the parties.

(i) Notwithstanding Section 170.6 of the Code of Civil Procedure, in direct calendar courts, challenges pursuant to that section shall be exercised within 15 days of the party's first appearance. Master calendar courts shall be governed solely by Section 170.6 of the Code of Civil Procedure.

(j) This section applies to all cases subject to this article which are filed on or after January 1, 1991.

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

SEC. 18. 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 1160

An act to add Section 2809 to the Labor Code, relating to deferred compensation plans.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 2809 is added to the Labor Code, to read:

2809. (a) Any employer, whether private or public, that offers its employees an employer-managed deferred compensation plan shall provide to each employee, prior to the employee's enrollment in the plan, written notice of the reasonably foreseeable financial risks accompanying participation in the plan, historical information to date as to the performance of the investments or funds available under the plan, and an annual balance sheet, annual audit, or similar document that describes the employer's financial condition as of a date no earlier than the immediately preceding year.

(b) Within 30 days after the end of each quarter of the calendar year, the employer, who directly manages the investments of a deferred compensation plan, shall provide, to each employee enrolled in a deferred compensation plan offered by the employer, a written report summarizing the current financial condition of the employer, summarizing the financial performance during the preceding quarter of each investment or fund available under the plan, and describing the actual performance of the employee's funds that are invested in each investment or fund in the plan.

(c) The obligations described in subdivisions (a) and (b) may be performed by a plan manager designated by the employer, who may contract with an investment manager for that purpose.

(d) If an employee is enrolled in a deferred compensation plan that is self-directed through a financial institution, the requirements set forth in this section shall be deemed to have been met.

CHAPTER 1161

An act to amend Sections 53325.3 and 53356 of, and to add Section 53356.03 to, the Government Code, relating to local government finance.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. (a) Notwithstanding any other provision of law, the distributions of fines, fees, forfeitures, and penalties by the County of Santa Cruz for the 1990–91 to 1994–95 fiscal years, inclusive, shall be deemed correct and no reductions or increases shall be made to those distributions for those fiscal years, except those amounts owed to other local agencies.

(b) With respect to subdivision (a), the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances applicable to the County of Santa Cruz. The County of Santa Cruz made distributions of fines, fees, forfeitures, and penalties to the state for the 1990–91 to 1994–95 fiscal years, inclusive, in good faith and reasonable belief that its methods of distribution of fines complied with all applicable statutes and these methods were not audited or reviewed by either the Department of Finance or the Controller until the end of the 1994–95 fiscal year.

SEC. 2. Section 53325.3 of the Government Code is amended to read:

53325.3. A tax imposed pursuant to this chapter is a special tax and not a special assessment, and there is no requirement that the tax be apportioned on the basis of benefit to any property. However, a special tax levied pursuant to this chapter may be on or based on a benefit received by parcels of real property, the cost of making facilities or authorized services available to each parcel, or some other reasonable basis as determined by the legislative body.

SEC. 3. Section 53356 of the Government Code is amended to read:

53356. If more than two-thirds of the votes cast at the election are in favor of incurring the indebtedness, the legislative body may, by resolution, at the time or times it deems proper, provide for the following:

(a) The form of the bonds.

(b) The execution of the bonds.

(c) The issuance of any part of the bonds.

(d) The appointment of one or more banks or trust companies within or without the state having the necessary trust powers as trustee, fiscal agent, paying agent, or bond registrar.

(e) The execution of a trust agreement or indenture securing the bonds.

(f) The pledge or assignment of any revenues of the community facilities district to the repayment of the bonds.

(g) The investment of any bond proceeds and other revenues, including special tax revenues, by the trustee or fiscal agent in any securities or obligations described in the resolution, indenture, trust agreement, or other instrument providing for the issuance of the bonds. Investment subject to this subdivision shall comply with Section 53356.03. The resolution may provide for payment to the United States from any available revenues of a community facilities district of any excess investment earnings required to be rebated by federal law.

(h) The date or dates to be borne by the bonds and the time or times of maturity of the bonds and the place or places and time or times that the bonds shall be payable.

(i) The interest, fixed or variable, to be borne by the bonds.

(j) The denominations, form, and registration privileges of the bonds.

(k) Any other terms and conditions determined to be necessary by the legislative body.

SEC. 4. Section 53356.03 is added to the Government Code, to read:

53356.03. The proceeds of any bond, note, or other security issued pursuant to this chapter, or the proceeds of any bond, note, or other security issued pursuant to any other authority where revenue collected pursuant to this chapter is pledged or otherwise committed to pay or repay principal, interest, or both, shall be deposited or

invested only in one or more of the following, to the extent that those securities are otherwise eligible legal investments of the local agency:

(a) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, and which have a maximum term to maturity not to exceed three years.

(b) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state, which are rated in one of the two highest short-term or long-term rating categories by either Moody's Investors Service, Inc. or Standard and Poor's Corporation, and which have a maximum term to maturity not to exceed three years.

(c) Time certificates of deposit or negotiable certificates of deposit issued by a state or nationally chartered bank or trust company, or a state or federal savings and loan association; provided, that the certificates of deposit shall be one or more of the following:

(1) Continuously and fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(2) Continuously and fully secured by securities described in subdivision (a) or (b) of this section which shall have a market value, as determined on a marked-to-market basis calculated at least weekly, and exclusive of accrued interest, or not less than 102 percent of the principal amount of the certificates on deposit.

(d) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided by either Moody's Investors Service, Inc. or Standard and Poor's Corporation, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of five hundred million dollars ($500,000,000) and that have an "A" or higher rating for the issuer's debentures, other than commercial paper, by either Moody's Investors Service, Inc. or Standard and Poor's Corporation, provided that purchases of eligible commercial paper may not exceed 180 days' maturity nor represent more than 10 percent of the outstanding commercial paper of an issuing corporation. Purchases of commercial paper may not exceed 20 percent of the proceeds of any bond invested pursuant to this section.

(e) A repurchase agreement with a state or nationally chartered bank or trust company or a national banking association or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, provided that all of the following conditions are satisfied:

(1) The agreement is secured by any one or more of the securities described in subdivision (a) of this section.

(2) These underlying securities are required by the repurchase agreement to be held by a bank, trust company, or primary dealer having a combined capital and surplus of at least one hundred million dollars ($100,000,000) and which is independent of the issuer of the repurchase agreement.

(3) These underlying securities are maintained at a market value, as determined on a marked-to-market basis calculated at least weekly, of not less than 103 percent of the amount so invested.

(f) An investment agreement or guaranteed investment contract with, or guaranteed by, a financial institution the long-term unsecured obligations of which are rated "AA" or better by Moody's Investors Service, Inc. and Standard and Poor's Corporation at the time of initial investment. The investment agreement shall be subject to a downgrade provision with at least the following requirements:

(1) The agreement shall provide that within five business days after the financial institution's long-term unsecured credit rating has been withdrawn, suspended, other than because of general withdrawal or suspension by Moody's Investors Service, Inc. or Standard and Poor's Corporation from the practice of rating that debt, or reduced below "AA-" by Standard and Poor's Corporation or below "Aa3" by Moody's Investors Service, Inc. (these events are called "rating downgrades") the financial institution shall give notice to the local agency and, within the five-day period, and for as long as the rating downgrade is in effect, shall deliver in the name of the local agency or its trustee to the local agency or its trustee federal securities allowed as investments under subdivision (a) of this section with aggregate current market value equal to at least 105 percent of the principal amount of the investment agreement invested with the financial institution at that time, and shall deliver additional allowed federal securities as needed to maintain an aggregate current market value equal to at least 105 percent of the principal amount of the investment agreement within three days after each evaluation date, which shall be at least weekly.

(2) The agreement shall provide that, if the financial institution's long-term unsecured credit rating is reduced below "A3" by Moody's Investors Service, Inc. or below "A-" by Standard and Poor's Corporation, the financial institution shall give notice of the downgrade to the trustee or the local agency, and the trustee of the local agency may, upon five business days' written notice to the financial institution, withdraw the investment agreement, with accrued but unpaid interest thereon to the date, and terminate the agreement.

CHAPTER 1162

An act to add Section 22810.6 to the Government Code, relating to public employees.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 22810.6 is added to the Government Code, to read:

22810.6. In order to be eligible after retirement to participate in a health benefit plan offered by the California Association of Highway Patrol pursuant to Section 22790, an annuitant shall have been a member of the California Highway Patrolmen Health Benefits Trust for a minimum of five years as an active employee.

An annuitant who has retired for disability before becoming eligible for service retirement is eligible to participate in a health benefit plan offered by the California Association of Highway Patrolmen. An annuitant who obtained a disability retirement after becoming eligible for a service retirement is not eligible to participate in a health benefit plan offered by the California Association of Highway Patrolmen unless the requirement of five years participation as an active employee has already been met.

Former members of the California State Police are eligible to participate in a health benefit plan offered by the California Association of Highway Patrolmen. Former members of the California State Police who transferred to the California Highway Patrol, and who retired before January 1, 2003, are exempt from the five-year requirement. Any former member of the California State Police who otherwise meets the requirement of five years minimum participation as an active employee in a health benefit program plan offered by the California Association of Highway Patrolmen is eligible to participate in such a plan after retirement.

This section shall only apply to persons who first became employees of the California Highway Patrol on and after January 1, 1994.

CHAPTER 1163

An act to amend Sections 4320 and 4330 of the Family Code, relating to family law.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 4320 of the Family Code is amended to read:

4320. In ordering spousal support under this part, the court shall consider all of the following circumstances:

(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

(c) The ability to pay of the supporting party, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

(d) The needs of each party based on the standard of living established during the marriage.

(e) The obligations and assets, including the separate property, of each party.

(f) The duration of the marriage.

(g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

(h) The age and health of the parties.

(i) The immediate and specific tax consequences to each party.

(j) The balance of the hardships to each party.

(k) The goal that the supported party shall be self-supporting within a reasonable period of time. A "reasonable period of time" for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section and the circumstances of the parties.

(*l*) Any other factors the court determines are just and equitable.

SEC. 2. Section 4330 of the Family Code is amended to read:

4330. (a) In a judgment of dissolution of marriage or legal separation of the parties, the court may order a party to pay for the support of the other party an amount, for a period of time, that the court determines is just and reasonable, based on the standard of living established during the marriage, taking into consideration the

circumstances as provided in Chapter 2 (commencing with Section 4320).

(b) When making an order for spousal support, whether the order is for a specific amount or simply a reservation of jurisdiction, and except in the limited number of cases where the court determines that a party is unable to make such efforts, the court shall give the parties the following admonition:

"It is the goal of this state that each party shall make reasonable good faith efforts to become self-supporting as provided for in Section 4320. The failure to make reasonable good faith efforts, may be one of the factors considered by the court as a basis for modifying or terminating support."

CHAPTER 1164

An act to amend Section 20502 of, and to add Section 20306 to, the Government Code, relating to public employees.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 20306 is added to the Government Code, to read:

20306. (a) Notwithstanding paragraph (1) of subdivision (a) of Section 20305, an employee participating in this system, other than a local safety member, who is credited with less than five years of state service and whose service falls below the minimum service prescribed by paragraph (2) of, or subparagraph (A) or (B) of paragraph (3) of, subdivision (a) of Section 20305 and who is eligible for membership in an alternate retirement plan established or maintained by the county superintendent of schools or the public agency pursuant to Article 1.5 (commencing with Section 53215) of Chapter 2 of Part 1 of Division 2 of Title 5, may participate in that plan in accordance with the following provisions:

(1) Eligibility to participate in an alternate retirement plan for an employee who is employed on or after July 1, 1997, or the effective date of the establishment of an alternate retirement plan, whichever is later, and who is represented by an exclusive bargaining representative shall be determined by the provisions of a memorandum of understanding executed between the public agency and the exclusive bargaining representative of the employee. That memorandum of understanding shall prescribe all of the terms and conditions under which the alternate plan is established including the employer and employee contribution rates.

(2) Eligibility to participate in an alternate retirement plan for an employee who is employed on or after July 1, 1997, or the effective date of the establishment of an alternate retirement plan, whichever is later, and who is not represented by an exclusive bargaining representative shall be determined by the public agency.

(3) Eligibility to participate in an alternate retirement plan established prior to July 1, 1997, for an employee who is employed prior to that date, or for plans established on or after July 1, 1997, for an employee who is employed prior to the date the plan is established, shall be determined by the employee in accordance with the following election procedures:

(A) The employer shall make available to each employee prior to October 1, 1997, or at least 90 days prior to the proposed effective date of the alternate retirement plan, whichever is later, information describing the employee's rights and responsibilities as a participant in either this system or the alternate retirement plan offered by the employer and describing the benefits provided by this system and that alternate retirement plan. The information shall include all of the terms and conditions under which the system and the alternate retirement plan are established including the employer and employee contribution rates.

(B) An employee who fails to make an election prior to January 1, 1998, or 90 days after being given the election opportunity, whichever is later, shall be informed by the employer by certified mail that the failure to make that election has been deemed an election to participate in the alternate retirement plan whenever his or her employment fall below the requirements prescribed by Section 20305.

(C) The employer shall maintain in its files a written acknowledgment by the employee that the employee received the information required under this section within the specified timeframe and shall maintain election results and election forms of employees.

(D) The employer shall notify the system as to the results of election by employees in the manner prescribed by the board.

(b) An employee's participation in the alternate retirement plan shall commence as soon as it is reasonable for this system to determine the member's qualifications pursuant to Section 20305. Employers shall submit all information deemed necessary for this system to make those determinations. Participation in the alternate retirement plan shall continue until the system determines that the employee's employment meets the conditions for membership in this system, whereupon the employee shall reenter membership in this system.

(c) Each county superintendent of schools may make the school districts in the county responsible for any administrative acts which may be necessary to implement this section. Any cost incurred by a county superintendent of schools in complying with this section shall

be reimbursed on a proportional basis by those school districts in the county participating in an alternative retirement system.

SEC. 2. Section 20502 of the Government Code is amended to read:

20502. The contract shall include in this system all firefighters, police officers, county peace officers, and other employees of the contracting agency, except as exclusions in addition to the exclusions applicable to state employees may be agreed to by the agency and the board. The contract shall not provide for the exclusion of some, but not all, firefighters, police officers, or county peace officers. The exclusions of employees, other than firefighters, police officers, or county peace officers, shall be based on groups of employees such as departments or duties, and not on individual employees. The exclusions of groups may be made by amendments to contracts, with respect to future entrants into the group. The board may disapprove the exclusion of any group, if in its opinion the exclusion adversely affects the interest of this system. Membership in this system is compulsory for all employees included under a contract. This section shall not be construed to supersede Sections 20303 and 20305.

SEC. 3. (a) The Legislature hereby declares that the intent of the amendments to Section 20502 of the Government Code by this act is to clarify the conditions under which part-time employees who are firefighters, police officers, or county deputy sheriffs are included in or excluded from membership in the Public Employees' Retirement System. In clarifying the conditions for membership, it is further the intent of these amendments to neither include nor exclude a part-time firefighter, police officer, or county deputy sheriff employee on any basis other than conditions prescribed by the Public Employees' Retirement Law and the regulations in effect on January 1, 1997.

(b) The Legislature hereby further declares that the amendments to Section 20502 of the Government Code by this act shall not be construed to nullify or otherwise impair the fourth amendment to the contract, effective on August 1, 1973, made between the City of Eureka and the Public Employees' Retirement System pursuant to Section 20460 of the Government Code, nor to contravene Sections 20303, 20305, 20481, 20482, or 20503 of the Government Code.

CHAPTER 1165

An act to amend Sections 22008, 22112.5, 22134, 22451.5, 22451.7, 23805, 23806, 23809, 23855, 23856, 24002, 24006, 24007, 24009, 24016, 24017, 24106, 24108, 24211, 24212, 24213, 24414, and 26139 of, to amend, repeal, and add Section 22139 of, to add Sections 22119.2, 22123.5, and 26112.5 to, to repeal Sections 22112, 22114, 23807, 23808, 23857, and

24008 of, and to repeal and add Sections 22111, 22123, and 24600 of, the Education Code, relating to school employees.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 22008 of the Education Code is amended to read:

22008. For the purposes of payments into or out of the retirement fund for adjustments of errors or omissions, the period of limitation of actions shall be applied, except as provided in Sections 23302 and 24613, as follows:

(a) No action may be commenced by or against the board , the system, or the plan more than three years after all obligations to or on behalf of the member, former member, or beneficiary have been discharged.

(b) If the system makes an error that results in incorrect payment to a member, former member, or beneficiary, the system's right to commence recovery shall expire three years from the date the incorrect payment was made.

(c) If an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member, former member, or beneficiary to receive benefits under the plan, the period of limitation shall commence with the discovery of the incorrect payment.

(d) Notwithstanding any other provision of this section, if an incorrect payment has been made on the basis of fraud or intentional misrepresentation by a member, beneficiary, or other party in relation to or on behalf of a member, or beneficiary, the three-year period of limitation shall not be deemed to commence or to have commenced until the system discovers the incorrect payment.

(e) The collection of overpayments under subdivisions (b), (c), and (d) shall be made pursuant to Section 24617.

SEC. 2. Section 22111 of the Education Code is repealed.

SEC. 3. Section 22111 is added to the Education Code, to read:

22111. "Child's portion" or "children's portion" means the amount of a disability allowance, disability retirement allowance, family allowance, or survivor benefit allowance payable for a dependent child or dependent children.

SEC. 4. Section 22112 of the Education Code is repealed.

SEC. 5. Section 22112.5 of the Education Code is amended to read:

22112.5. (a) "Class of employees" means a number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program, or share other similarities related to the nature of the work being performed.

(b) A class of employees may be comprised of one person if no other person employed by the employer performs similar duties, is employed in the same type of program, or shares other similarities related to the nature of the work being performed and that same class is in common use among other employers.

(c) The board shall have the right to override the determination by an employer as to whether or not a group or an individual constitutes a "class of employees" within the meaning of this section.

(d) The amendments to this section during the 1995–96 Regular Session of the Legislature shall be deemed to have become operative on July 1, 1996.

SEC. 6. Section 22114 of the Education Code is repealed.

SEC. 7. Section 22119.2 is added to the Education Code, to read:

22119.2. (a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience as specified in Section 45028 for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

(4) Member contributions picked up by an employer pursuant to Section 22903 or 22904.

(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Any other payments the board determines to be "creditable compensation."

(b) "Creditable compensation" does not mean and shall not include:

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of this plan in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

(8) Compensatory damages or money paid to a member in excess of creditable compensation as a compromise settlement or as severance pay.

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the plan. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the plan and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

(11) Any other payments the board determines not to be "creditable compensation."

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

SEC. 8. Section 22123 of the Education Code is repealed.

SEC. 9. Section 22123 is added to the Education Code, to read:

22123. (a) "Dependent child" or "dependent children" under the disability allowance and family allowance programs means a member's unmarried offspring or stepchild who is not older than 22 years of age and who is financially dependent upon the member on the effective date of the member's disability allowance or the date of the member's death.

(b) "Offspring" shall include the member's child who is born within the 10-month period commencing on the earlier of the member's disability allowance effective date or the date of the member's death.

(c) "Offspring" shall include a child adopted by the member.

(d) "Dependent child" shall not include the member's offspring or stepchild who is adopted by a person other than the member's spouse.

(e) "Dependent child" under the family allowance program shall not include:

(1) The member's offspring or stepchild who was financially dependent on the member on the date of the member's death if a disability allowance was payable to the member prior to his or her death and the disability allowance did not include an amount payable for that offspring or stepchild.

(2) A stepchild or adopted child acquired subsequent to the death of the member.

(f) "Financially dependent" for purposes of this section means that at least one-half of the child's support was being provided by the member on the member's disability allowance effective date or the date of the member's death. The system may require that income tax records or other data be submitted to substantiate the child's financial dependence. In the absence of substantiating documentation, the system may determine that the child was not dependent on the effective date of the member's disability allowance or the date of the member's death.

(g) "Member" as used in this section shall have the same meaning specified in Section 23800.

(h) 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. 9.5. Section 22123 is added to the Education Code, to read:

22123. (a) "Dependent child" or "dependent children" under the disability allowance and family allowance programs means a member's unmarried offspring or stepchild who is financially dependent upon the member on the effective date of the member's disability allowance or the date of the member's death and who meets either of the following:

(1) Is not older than 18 years of age.

(2) Is between 18 and 22 years of age and who is registered as a full-time student as defined in Section 22139 on the effective date of the member's disability allowance or the date of the member's death. A dependent child who is a full-time student in the month he or she attains 22 years of age shall be deemed not to have attained that age until the first day of the month following the school quarter or semester that was in progress in the month the person attains 22 years of age.

(b) "Offspring" shall include:

(1) The member's child who is born within the 10-month period commencing on the earlier of the member's disability allowance effective date or the date of the member's death.

(2) A child adopted by the member.

(c) "Dependent child" shall not include the member's offspring or stepchild who is adopted by a person other than the member's spouse.

(d) "Dependent child" under the family allowance program shall not include:

(1) A member's offspring or stepchild who was financially dependent on the member on the date of the member's death if a disability allowance was payable to the member prior to his or her death and the disability allowance did not include an amount payable for that offspring or stepchild.

(2) A stepchild or adopted child acquired subsequent to the death of the member.

(e) "Financially dependent" for purposes of this section means that at least one-half of the child's support was being provided by the member on the member's disability allowance effective date or the date of the member's death. The system may require that income tax records or other data be submitted to substantiate the child's financial dependence. In the absence of substantiating documentation, the system may determine that the child was not dependent on the effective date of the member's disability allowance or the date of the member's death.

(f) "Member" as used in this section shall have the same meaning specified in Section 23800.

(g) This section shall become operative on January 1, 2002.

SEC. 10. Section 22123.5 is added to the Education Code, to read:

22123.5. (a) "Dependent child" or "dependent children" under the disability retirement and survivor benefit allowance programs means a member's offspring or stepchild who is not older than 21 years of age and who is financially dependent upon the member on the effective date of the member's disability retirement or the date of the member's death.

(b) "Offspring" shall include the member's child who is born within the 10-month period commencing on the earlier of the member's disability retirement effective date or the date of the member's death.

(c) "Offspring" shall include a child adopted by the member.

(d) "Dependent child" shall not include the member's offspring or stepchild who is adopted by a person other than the member's spouse.

(e) "Dependent child" under the survivor benefit allowance program shall not include a stepchild or adopted child acquired subsequent to the death of the member.

(f) "Financially dependent" for purposes of this section means that at least one-half of the child's support was being provided by the member on the member's disability retirement effective date or the date of the member's death. The system may require that income tax records or other data be submitted to substantiate the child's financial dependence. In the absence of substantiating documentation, the system may determine that the child was not dependent on the effective date of the member's disability retirement or the date of the member's death.

(g) "Member" as used in this section shall have the same meaning specified in Section 23850.

SEC. 11. Section 22134 of the Education Code is amended to read:

22134. (a) "Final compensation" means the highest average annual compensation earnable by a member during any period of three consecutive years while an active member of the plan or time during which he or she was not a member but for which the member has received credit under the plan, except time that was so credited for service performed outside this state prior to July 1, 1944. The last three consecutive years of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who is also a member of the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, or the San Francisco City and County Employees' Retirement System shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or of a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under this plan.

(3) Retirement under this plan is concurrent with the member's retirement under the other system.

(d) The compensation earnable for the first position in which California service is credited shall be used when additional compensation earnable is required to accumulate three consecutive

years for the purpose of determining final compensation under Section 23804.

(e) The board may specify a different final compensation with respect to allowances based on part-time service performed prior to July 1, 1956, for which credit was given under this plan under board rules in effect prior to that date.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The earnable salaries for periods of part-time service shall be adjusted by the ratio that part-time service has to full-time service.

(g) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

SEC. 12. Section 22139 of the Education Code is amended to read:

22139. "Full-time student" means a dependent child between 18 and 22 years of age who is in full-time attendance at an educational institution. An individual shall not qualify as a full-time student if attendance at an educational institution is paid for or provided by the individual's employer or is in the course of on-the-job training, unless the on-the-job training is part of the regularly established school training for which credit toward a diploma, certificate, or graduation is given. An individual shall not qualify as a full-time student for any full-time course of study that is directly paid for and sponsored under the Job Corps of the Economic Opportunity Act of 1964 (Public Law 88-452), as amended, or paid for or sponsored by any armed forces for this state or the United States of America. The final determination whether a person qualifies as a full-time student shall be made by the board in light of the standards and practices of the institution involved.

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. 12.5. Section 22139 is added to the Education Code, to read:

22139. (a) "Full-time student" means a dependent child between 18 and 22 years of age:

(1) Who is in full-time attendance at an educational institution.

(2) For whom during any normal period of vacation or holiday of the institution involved there is sufficient evidence to satisfy the board of the dependent child's intention to continue in full-time attendance at the educational institution immediately following the period of vacation or holiday.

(b) "Full-time student" does not mean and shall not include:

(1) A person who fails to return to full-time attendance immediately following any normal period of vacation or holiday.

(2) A person during a period of nonattendance if the nonattendance is due to expulsion or suspension.

(3) A person whose attendance at an educational institution is paid for and provided by the employer or is in the course of on-the-job training, unless the on-the-job training is part of the regularly established school training for which credit toward a diploma, certificate, or graduation is given.

(4) A person whose full-time course of study is directly paid for and sponsored under the Job Corps of the Economic Opportunity Act of 1964 (Public Law 88-452), as amended, or paid for or sponsored by any armed forces for this state or the United States of America.

(c) The final determination whether a person qualifies as a full-time student shall be made by the board in light of the standards and practices of the institution involved.

(d) This section shall become operative on January 1, 2002.

SEC. 13. Section 22451.5 of the Education Code is amended to read:

22451.5. (a) Upon request by the system, a member shall provide proof of his or her date of birth to resolve any discrepancy between the member's date of birth as originally documented on the records of the system and the member's date of birth as subsequently submitted.

(b) A member shall provide proof of the date of birth of a person designated by the member as beneficiary under an option selected pursuant to Chapter 28 (commencing with Section 24300) if the beneficiary is not also a member of the plan.

(c) Documentation substantiating the date of birth of a member's dependent child shall be provided if an allowance payable under this part will include an amount for that dependent child.

(d) At the time application is made for payment of a family allowance or survivor benefit allowance to a surviving spouse or dependent parent, a member's surviving spouse or dependent parent shall provide proof of his or her date of birth.

(e) At the discretion of the board, an original document, a certified copy of the original, or a photocopy shall be acceptable to establish proof of the date of birth.

SEC. 14. Section 22451.7 of the Education Code is amended to read:

22451.7. The system may withhold benefit payments until proof of the date of birth of a member, beneficiary under an option selected pursuant to Chapter 28 (commencing with Section 24300), surviving spouse, dependent child or dependent parent has been received and accepted by the system.

SEC. 15. Section 23805 of the Education Code is amended to read:

23805. A family allowance is payable in the amount and to the specified persons in the following order of priority:

(a) To the deceased member's surviving spouse who has financial responsibility for at least one dependent child, an amount equal to 40 percent of the member's final compensation or the disabled member's projected final compensation plus 10 percent of the

member's final compensation or the disabled member's projected final compensation for each child, up to a maximum allowance of 90 percent.

(b) If there is no surviving spouse or upon the death of the surviving spouse, to each dependent child, an amount equal to 10 percent of the deceased member's final compensation or the disabled member's projected final compensation, up to a maximum allowance of 50 percent. If there are more than five dependent children, they shall share equally in the maximum allowance of 50 percent.

(c) To the surviving spouse at age 60 years or over if there is no dependent child, an allowance equal to the amount that would have been payable to the spouse as beneficiary under Option 3 as provided in Section 24300, computed on the member's projected final compensation and projected service to normal retirement age. The allowance payable under this subdivision shall be increased by application of the benefit improvement factor for time that elapses between the date the member would have attained normal retirement age and the date the family allowance under this subdivision begins to accrue. The allowance calculation shall include service credit for the unused sick leave that had accrued to the member or disabilitant as of the date of his or her death. Eligibility for the inclusion of service credit for unused sick leave credit and the calculation of that service credit shall be determined pursuant to Section 22717.

(d) If there is neither surviving spouse nor dependent child, to the dependent parent, age 60 years or over, an allowance equal to the amount that would have been payable to the dependent parent as beneficiary under Option 3 as provided in Section 24300 computed on the member's projected final compensation and projected service to normal retirement age. The allowance calculation shall include service credit for the unused sick leave that had accrued to the member as of the date of his or her death. Eligibility for the inclusion of service credit for unused sick leave and the calculation of that service credit shall be determined pursuant to Section 22717. If there are two dependent parents, only one family allowance shall be payable under this subdivision and that allowance shall be computed on the assumption that the younger parent is the option beneficiary and the allowance shall be divided equally for as long as there are two dependent parents. Thereafter, the full allowance shall be payable to the surviving dependent parent.

(e) The surviving spouse or dependent parent may elect to begin receiving the family allowance payable under subdivision (c) or (d) immediately upon the later of the death of the member or when there is no dependent child, or to defer receipt of the allowance to the date the surviving spouse or dependent parent attains age 60 years. If allowance payments commence prior to the date the surviving spouse or dependent parent attains age 60 years, the allowance payable shall be actuarially reduced.

(f) If there is no dependent child, a surviving spouse or dependent parent or parents may elect, prior to receipt of the first payment under subdivision (c) or (d), to receive the member's accumulated retirement contributions in a lump sum subject to a reduction for any disability allowance or family allowance payments previously made.

SEC. 16. Section 23806 of the Education Code is amended to read:

23806. (a) A dependent child who is not in the care of the surviving spouse shall be included in the calculation of the family allowance. That child's portion of the allowance shall be paid to the guardian of the estate of the child, the natural or adoptive parent having custody of the child, or if none, then to the trustee of the trust established for the benefit of the child.

(b) In the case of a dependent child age 18 years or older, the child's portion of the allowance shall be paid to the guardian of the estate of the child, trustee of the trust established for the benefit of the child, or if none, then to the child.

SEC. 17. Section 23807 of the Education Code is repealed.

SEC. 18. Section 23808 of the Education Code is repealed.

SEC. 19. Section 23809 of the Education Code is amended to read:

23809. The family allowance payable to the surviving spouse who has financial responsibility for at least one dependent child, or the family allowance payable to a dependent child, shall be reduced by an amount equal to the unmodified benefits paid or payable from other public systems for the same event which qualified the surviving spouse or dependent child for the family allowance.

SEC. 20. Section 23855 of the Education Code is amended to read:

23855. (a) The survivor benefit allowance is a monthly allowance equal to one-half of the modified retirement allowance the member would have received at age 60 years, if the member had retired and elected Option 3 as provided in Section 24300, naming the spouse as the option beneficiary.

(b) The allowance payable under this subdivision shall be based on the member's actual service credit and final compensation as of the date of his or her death, the age 60 retirement factor, and the member's and spouse's ages as of the date the member would have attained age 60 years. If the member's death occurs after he or she attains age 60 years, his or her actual final compensation, the age 60 retirement factor, and the member's and spouse's ages as of the date of the member's death shall be used in the allowance calculation.

(c) The allowance calculation shall include service credit for the unused sick leave that had accrued to the member as of the date of his or her death. Eligibility for the inclusion of unused sick leave service credit and the calculation of that service credit shall be determined pursuant to Section 22717.

(d) The surviving spouse may elect to begin receiving the survivor benefit allowance immediately as of the date of the member's death or to defer receipt of the allowance to the date the member would have attained age 60 years. If allowance payments to

the surviving spouse commence prior to the date the member would have attained age 60 years, the allowance payable shall be actuarially reduced.

(e) If the spouse elects, pursuant to Section 23852, to receive the survivor benefit allowance, an additional 10 percent of final compensation shall be payable for each dependent child who is not older than age 21 years, up to a maximum of 50 percent of final compensation. The child's portion shall begin to accrue on the day following the member's date of death and shall be payable even if the spouse elects to postpone receipt of the spouse's survivor benefit allowance until the date the member would have attained age 60 years.

SEC. 21. Section 23856 of the Education Code is amended to read:

23856. (a) A dependent child who is not in the care of the surviving spouse shall be included in the calculation of the children's portion of the survivor benefit allowance. That child's portion of the allowance shall be paid to the guardian of the estate of the child, the natural or adoptive parent having custody of the child, or if none, then to the trustee of the trust established for the benefit of the child.

(b) In the case of a dependent child who is age 18 years or older, the child's portion of the allowance shall be paid to the guardian of the estate of the child, trustee of the trust established for the benefit of the child, or if none, then to the child.

SEC. 21.5. Section 23857 of the Education Code is repealed.

SEC. 22. Section 24002 of the Education Code is amended to read:

24002. The board may authorize payment of a disability allowance to any member who is qualified upon application by the member, the member's guardian or conservator, or the member's employer, if the application is made during any one of the following periods:

(a) While the member is employed or on a compensated leave of absence.

(b) While the member is physically or mentally incapacitated for performance of service and the incapacity has been continuous from the last day of service for which compensation is payable to the member.

(c) While the member is on a leave of absence without compensation, granted for reason other than mental or physical incapacity for performance of service, and within four months after the last day of service for which compensation is payable to the member, or within 12 months of that date if the member is on an employer-approved leave to study at an approved college or university.

(d) Within four months after the termination of the member's employment subject to coverage by the plan, if the application was not made under subdivision (b) and was not made more than four months after the last day of service for which compensation is payable to the member.

(e) A member with a dependent child who becomes disabled prior to normal retirement age, and whose sick leave will extend beyond normal retirement age, may be awarded a disability allowance with an effective date after normal retirement age, if application is filed prior to attaining normal retirement age.

(f) The member is not applying for a disability allowance because of a physical or mental condition that existed at the time the most recent membership in the plan commenced and which remains substantially unchanged at the time of application.

SEC. 23. Section 24006 of the Education Code is amended to read:

24006. Upon qualification for disability, a member shall receive an annual allowance equal to 50 percent of final compensation payable in monthly installments. The allowance shall be increased by 10 percent of final compensation for each dependent child, to a maximum of four dependent children.

SEC. 24. Section 24007 of the Education Code is amended to read:

24007. A member who qualifies for a disability allowance under this chapter and who has attained age 45 years, but who has not yet attained age 60 years, shall have his or her allowance calculated upon service with each year of credited California service providing 5 percent of final compensation. The disabled member shall receive the lesser of this amount or the amount provided by Section 24006. A child's portion of the allowance shall be determined pursuant to Section 24006.

SEC. 25. Section 24008 of the Education Code is repealed.

SEC. 26. Section 24009 of the Education Code is amended to read:

24009. A disability allowance payable pursuant to Sections 24006 and 24007 that includes a child's portion shall be reduced when a dependent child becomes ineligible. The reduction shall take into account the increases made by application of the improvement factor. However, the member's disability allowance shall not be less than it would have been if there had never been a dependent child.

SEC. 27. Section 24016 of the Education Code is amended to read:

24016. (a) For any one or more months in which the total of a disabled member's allowance, excluding children's portions, and earnings exceed 100 percent of indexed final compensation, 100 percent of the amount in excess shall be considered an overpayment and recovery shall be made.

(b) This action shall not apply to disabled members who have allowances terminated under Section 24015 or who are enrolled in an approved rehabilitation program.

SEC. 28. Section 24017 of the Education Code is amended to read:

24017. If a person who began receiving a disability allowance after June 30, 1972, is enrolled in an approved rehabilitation program and the total of the disability allowance, excluding children's portions, and earnings exceed 100 percent of indexed final compensation, 50 percent of the amount in excess shall be considered an overpayment and recovery shall be made.

SEC. 29. Section 24106 of the Education Code is amended to read:

24106. Upon retirement for disability pursuant to this chapter, a member shall receive a retirement allowance that shall consist of all of the following:

(a) An annual allowance equal to 50 percent of final compensation payable in monthly installments.

(b) An additional 10 percent of final compensation for each dependent child, up to a maximum of 40 percent of final compensation. If there are more than four dependent children, they shall share equally in the maximum allowance of 40 percent. A dependent child may waive his or her right to his or her portion of the allowance in accordance with procedures established by the system.

(c) An annuity that shall be the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account on the effective date of the disability retirement.

SEC. 30. Section 24108 of the Education Code is amended to read:

24108. A retirement allowance payable pursuant to Section 24106 that includes a child's portion shall be reduced when a dependent child becomes ineligible. The reduction shall take into account the increases made by application of the improvement factor. However, the retired member's allowance shall not be less than it could have been if there had never been a dependent child.

SEC. 31. Section 24211 of the Education Code is amended to read:

24211. When a member who has been granted a disability allowance after June 30, 1972, returns to employment subject to coverage by the plan and performs:

(a) Less than three years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(b) Three or more years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

SEC. 32. Section 24212 of the Education Code is amended to read:

24212. If a disability allowance granted after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment subject to coverage by the plan, the service retirement allowance, when payable, shall be based on projected service, projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance excluding children's portions.

SEC. 33. Section 24213 of the Education Code is amended to read:

24213. (a) When a member who has been granted a disability allowance after June 30, 1972, attains normal retirement age, or at a later date when there is no dependent child, the disability allowance shall be terminated and the member shall be eligible for service retirement. The retirement allowance shall be calculated on the projected final compensation and projected service to normal retirement age. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance.

(b) Upon retirement, the member may elect to modify the service retirement allowance payable in accordance with any option provided under this part.

SEC. 34. Section 24414 of the Education Code is amended to read:

24414. (a) Beginning in the 1989–90 fiscal year, and until the first fiscal year in which the Supplemental Benefit Maintenance Account established by Section 22400 derives sufficient resources from the General Fund pursuant to Section 22954 to provide purchasing power of 68.2 percent as authorized by Section 24415, the board shall transfer from the retirement fund to the Supplemental Benefit Maintenance Account those funds that are necessary to provide purchasing power of 68.2 percent as authorized by Section 24415. This subdivision shall become inoperative in the first fiscal year following the joint determination by the board and the Director of Finance that the funds scheduled for transfer from the General Fund pursuant to Section 22954 to the Supplemental Benefit Maintenance Account are adequate to meet the purposes of Section 24415.

(b) The funds advanced pursuant to subdivision (a) and any funds appropriated by Item 1920-111-835 of the Budget Act of 1989 from the

retirement fund to provide purchasing power protection payments shall be repaid from those funds transferred pursuant to Section 22954 that are in excess of the resources required to meet the purposes of Section 24415. Repayment shall commence in any year in which those excess funds exist and shall continue until the time all funds advanced under this section and any funds appropriated by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments are repaid. Repayment shall include regular interest from the time funds are advanced or appropriated until the time of repayment. After full repayment is made, the Director of Finance shall, notwithstanding Section 22954, adjust the percentage of the General Fund transfer in the amount which causes the balance in the account to equal a three-year reserve at the end of the subsequent fiscal year. The Director of Finance may base the adjusted rate on data provided by the board for projected payments in subject years, projected payroll, projected interest accrual to the account, and any other factors deemed relevant by the board.

(c) Notwithstanding Section 24415 or any other provision of law, if the state's contributions to the retirement fund provided by Section 22954 are, for any reason whatsoever, reduced or terminated before the retirement fund is fully repaid, as provided in subdivision (b), for all advances or transfers made pursuant to subdivision (a) and for any appropriations made by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments, all duties of the board to make the advances or transfers required by subdivision (a) and to make the distributions required by Section 24415 shall immediately cease and shall have no further force or effect.

(d) It is the intent of the Legislature, in enacting the Supplemental Benefit Maintenance Program embodied in this section and Section 22400, subdivision (b) of Section 22954, Section 24415, subdivision (b) of Section 44929, and subdivision (b) of Section 87488, not to manifest any promise, except as provided in subdivision (c) of Section 22954, that, when accepted, would create a contract, express or implied. Notwithstanding any other provision of this part, nothing in the sections establishing the Supplemental Benefit Maintenance Program shall be construed as a basis for any implied contractual obligation, or as an element of exchange of consideration by a private party for consideration offered by the state, or as an intent to grant private rights of contract, or as conferring any vested right whatsoever on any present or future member, present or future annuitant, present or future surviving spouse of a present or future member or a present or future annuitant, dependent child or dependent parent of a present or future member or a present or future annuitant, or present or future beneficiary of the plan.

(e) The board shall report annually to the Director of Finance and the appropriate fiscal and policy committees of the Legislature upon

the benefits paid pursuant to Section 24415 and all actions taken pursuant to Section 22954 and this section.

SEC. 35. Section 24600 of the Education Code is repealed.

SEC. 36. Section 24600 is added to the Education Code, to read:

24600. (a) A retirement allowance begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance is terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance begins to accrue on the effective date of the member's disability allowance and ceases on the earlier of the day of the member's death or the day on which the disability allowance terminated for a reason other than the member's death.

(d) A family allowance begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance.

(1) Until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is eligible as a full-time student to receive a child's portion of an allowance shall continue to be eligible for a child's portion until the person attains 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age.

(2) Notwithstanding subdivision (e) of Section 22123, until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is not eligible as a full-time student to receive a child's portion of an allowance, may return to school on a full-time basis on or after January 1, 1997, and become eligible for a child's portion from the date of return to full-time student status until 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time

student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age. No benefits shall be payable under this paragraph for a person who does not return to school as a full-time student prior to attaining 22 years of age.

(g) Supplemental payments issued pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive, of this section.

(h) Notwithstanding any other provision of this part or other law, distributions from the plan by the system shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the required beginning date of benefit payments that represent the entire interest of the member in the plan shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100), not later than April 1 of the calendar year following the later of both of the following:

(A) The calendar year in which the member attains age $70^1/_2$ years.

(B) The calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains age $70^1/_2$ years; or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), the phrase "terminates employment" means the later of the termination of employment subject to coverage by the plan or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

(j) This section shall remain in effect only 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. 36.5. Section 24600 is added to the Education Code, to read:

24600. (a) A retirement allowance begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance begins to accrue on the effective date of the member's disability and ceases on the earlier of the day of the member's death or the day on which the disability allowance terminated for a reason other than the member's death.

(d) A family allowance begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance. An allowance payable because of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester that is in progress in the month the full-time student attains 22 years of age. Any adjustment to an allowance because of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the first day of the month in which return to full-time attendance was required and shall begin to accrue again on the first day of the month in which full-time attendance resumes.

(g) Supplemental payments issued pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive.

(h) Notwithstanding any other provision of this part or other law, distributions from the plan by the system shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the required beginning date of benefit payments that represent the entire interest of the member in the plan shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70 $^{1}/_{2}$ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year following

the later of (A) the calendar year in which the member attains 70 $^1/_2$ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), "terminates employment" means the later of the termination of employment subject to coverage by the plan or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

(j) This section shall become operative on January 1, 2002.

SEC. 37. Section 26112.5 is added to the Education Code, to read:

26112.5. (a) "Class of employees" means a number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program, or share other similarities related to the nature of the work being performed.

(b) A class of employees may be comprised of one person if no other person employed by the employer performs similar duties, is employed in the same type of program, or shares other similarities related to the nature of the work being performed and that same class is in common use among other employers.

(c) The board shall have the right to override the determination by an employer as to whether or not a group or an individual constitutes a "class of employees" within the meaning of this section.

(d) This section shall be deemed to have become operative on July 1, 1996.

SEC. 37.5. Section 26139 of the Education Code is amended to read:

26139. (a) "Salary" means remuneration payable in cash by an employer to a participant for creditable service. Salary shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience as specified in Section 45028 for creditable service performed.

(2) For participants not paid according to a salary schedule, money paid for creditable service performed.

(3) Money paid for the participant's absence from performance of creditable service as approved by an employer, except as provided in paragraph (5) of subdivision (b).

(4) Employee contributions picked up by an employer under Section 414(h)(2) of Title 26 of the United States Code and Section 17501 of the Revenue and Taxation Code.

(5) Amounts deducted by an employer from the participant's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and

deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Any other payments the board determines by plan amendment to be "salary."

(b) "Salary" does not mean and shall not include:

(1) Money paid for service that is not creditable service.

(2) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(3) Fringe benefits provided by an employer.

(4) Job-related expenses paid or reimbursed by an employer.

(5) Money paid for unused accumulated leave.

(6) Compensatory damages or money paid to a participant in excess of salary as a compromise settlement or as severance pay.

(7) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for a participant.

(8) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a participant's benefits under the plan.

(9) Any other payments the board determines by plan amendment not to be "salary."

(c) Any employer or person who knowingly or willfully reports salary in a manner inconsistent with the provisions of subdivisions (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of such inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with provisions of the Penal Code. The system may establish procedures to ensure that salary reported by an employer is in compliance with this section.

(d) This section shall be deemed to have become operative on July 1, 1996.

CHAPTER 1166

An act to amend Section 308 of the Penal Code, relating to crimes.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 308 of the Penal Code is amended to read:

308. (a) Every person, firm or corporation which knowingly sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars ($200) for the first offense, five hundred dollars ($500) for the second offense, and one thousand dollars ($1,000) for the third offense.

Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars ($75) or 30 hours of community service work.

(c) Every person, firm or corporation which sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business a copy of this act, and

any such person failing to do so shall upon conviction be punished by a fine of ten dollars ($10) for the first offense and fifty dollars ($50) for each succeeding violation of this provision, or by imprisonment for not more than 30 days.

The Secretary of State is hereby authorized to have printed sufficient copies of this act to enable him or her to furnish dealers in tobacco with copies thereof upon their request for the same.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) It is the Legislature's intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

(f) Notwithstanding any other provision of this section, the Director of Corrections may sell or supply tobacco and tobacco products, including cigarettes and cigarette papers, to any person confined in any institution or facility under his, her, or its jurisdiction who has attained the age of 16 years, if the parent or guardian of the person consents thereto, and may permit smoking by any such person in any such institution or facility. No officer or employee of the Department of Corrections shall be considered to have violated this section by any act authorized by this subdivision.

SEC. 1.5. Section 308 of the Penal Code is amended to read:

308. (a) (1) Prior to January 1, 2000, any person, firm, or corporation that knowingly sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is guilty of an infraction, punishable by a fine of two hundred fifty dollars ($250), or shall be subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars ($200) for the first offense, five hundred dollars ($500) for the second offense, and one thousand dollars ($1,000) for the third offense. The infraction set forth in this paragraph shall not apply to any employer of 30 or more employees, or to the employees of that employer.

(2) On or after January 1, 2000, any person, firm, or corporation that does an act prohibited by paragraph (1) shall be subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, county counsel, or district attorney, punishable as prescribed in paragraph (1).

(3) Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county

counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b). The remaining 50 percent of each civil and criminal penalty collected pursuant to this subdivision shall be used to fund local tobacco education programs.

Proof that a defendant demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine is the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(b) Every person under the age of 18 years who purchases , receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of one hundred fifty dollars ($150), and by either 30 hours of community service work, or a 90-day suspension of his or her driver's license, or a 90-day delay in his or her eligibility for a driver's license, or both. The 30 hours of community service may include attendance or participation in local tobacco education programs.

This subdivision shall not apply to subdivisions (c) and (d) of Section 22952 of the Business and Professions Code or to any other provision of law authorizing the use of persons under 18 years of age in sting inspections designed to pursue violations of subdivision (a).

(c) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(d) It is the Legislature's intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

SEC. 2. Section 1.5 of this bill incorporates some of the amendments to Section 308 of the Penal Code proposed by both this

bill and AB 2188. 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 308 of the Penal Code, and (3) this bill is enacted after AB 2188, in which case Section 1 of this bill shall not become operative.

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 1167

An act to amend Sections 5851, 5857, 5860, 5869, and 5870 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 30, 1996. Filed with Secretary of State September 30, 1996.]

I have signed this date Senate Bill No. 1667. However, I am deleting the $19,823,000 and the $26,091,000 appropriations to the Department of Mental Health for expansion of services under the Children's Mental Health Services program for the 1997–98 and 1998–99 fiscal years.

The program proposed for expansion in this bill is consistent with the Administration's efforts in promoting preventive rather than remedial services. In recognition of its merits, the 1996 Budget Act augmented this program by $7,125,000. Further expansion of this program, however, should be decided as part of the annual budget process.

PETE WILSON, Governor

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

SECTION 1. Section 5851 of the Welfare and Institutions Code is amended to read:

5851. (a) The Legislature finds and declares that there is no comprehensive county interagency system throughout California for the delivery of mental health services to seriously emotionally and behaviorally disturbed children and their families. Specific problems to be addressed include the following:

(1) The population of children which should receive highest priority for services has not been defined.

(2) Clear and objective client outcome goals for children receiving services have not been specified.

(3) Although seriously emotionally and behaviorally disturbed children usually have multiple disabilities, the many different state and county agencies, particularly education, social services, juvenile justice, health, and mental health agencies, with shared responsibility for these individuals, do not always collaborate to develop and deliver integrated and cost-effective programs.

(4) A range of community-based treatment, case management, and interagency system components required by children with serious emotional disturbances has not been identified and implemented.

(5) Service delivery standards, which ensure culturally competent care in the most appropriate, least restrictive environment have not been specified and required.

(6) The mental health system lacks accountability and methods to measure progress towards client outcome goals and cost-effectiveness. There are also no requirements for other state and county agencies to collect or share relevant data necessary for the mental health system to conduct this evaluation.

(b) The Legislature further finds and declares that the model developed in Ventura County beginning in the 1984–85 fiscal year through the implementation of Chapter 1474 of the Statutes of 1984 and expanded to the Counties of Santa Cruz, San Mateo, and Riverside in the 1989–90 fiscal year pursuant to Chapter 1361 of the Statutes of 1987, provides a comprehensive, interagency system of care for seriously emotionally and behaviorally disturbed children and their families and has successfully met the performance outcomes required by the Legislature. The Legislature finds that this accountability for outcome is a defining characteristic of a system of care as developed under this part. It finds that the system established in these four counties can be expanded statewide to provide greater benefit to children with serious emotional and behavioral disturbances at a lower cost to the taxpayers. It finds further that substantial savings to the state and these four counties accrue annually, as documented by the independent evaluator provided under this part. Of the amount continuing to be saved by the state in its share of out-of-home placement costs and special education costs for those counties and others currently funded by this part, a portion is hereby reinvested to expand and maintain statewide the system of care for children with serious emotional and behavioral disturbances.

(c) Therefore, using the Ventura County model guidelines, it is the intent of the Legislature to accomplish the following:

(1) To phase in the system of care for children with serious emotional and behavioral problems developed under this part to all counties within the state.

(2) To require that 100 percent of the new funds appropriated under this part be dedicated to the targeted population as defined in Section 5856.

(3) To expand interagency collaboration and shared responsibility for seriously emotionally and behaviorally disturbed children in order to do the following:

(A) Enable children to remain at home with their families whenever possible.

(B) Enable children placed in foster care for their protection to remain with a foster family in their community as long as separation from their natural family is determined necessary by the juvenile court.

(C) Enable special education pupils to attend public school and make academic progress.

(D) Enable juvenile offenders to decrease delinquent behavior.

(E) Enable children requiring out-of-home placement in licensed residential group homes or psychiatric hospitals to receive that care in as close proximity as possible to the child's usual residence.

(F) Separately identify and categorize funding for these services.

(4) To increase accountability by expanding the number of counties with a performance contract that requires measures of client outcome and cost avoidance.

(d) It is the intent of the Legislature that the outcomes prescribed by this section shall be achieved regardless of the cultural or ethnic origin of the seriously emotionally and behaviorally disturbed children and their families.

SEC. 2. Section 5857 of the Welfare and Institutions Code is amended to read:

5857. (a) The State Department of Mental Health shall issue a request for proposals to counties in each year that additional funds are provided for expansion pursuant to this part.

(b) Proposals shall be submitted to the department by a county mental health department with joint approval of collaborating local agencies including, but not limited to, special education, juvenile court, and child protective services agencies, as well as the board of supervisors and the mental health advisory board.

(c) Program staff from the department shall review and approve all proposals for compliance with all requirements of law and request for proposals guidelines.

(d) The department may accept letters of intent from a county in lieu of a proposal if moneys are not available to the county, to affirm commitment by the county to participate in the request for proposals process when moneys become available.

SEC. 3. Section 5860 of the Welfare and Institutions Code is amended to read:

5860. (a) (1) Final selection of county proposals shall be subject to the amount of funding approved for expansion of services under this part.

(2) Of the funds appropriated in Item 4440-101-0001 of the Budget Act of 1996, the sum of seven million one hundred twenty-five thousand dollars ($7,125,000) shall be allocated, in accordance with the following schedule:

(A) Eight hundred fifty-seven thousand dollars ($857,000) shall be reappropriated in augmentation of Item 4440-001-001 to provide for departmental support for additional administrative costs associated with the augmentation contained in subparagraph (B).

(B) Six million two hundred sixty-eight thousand dollars ($6,268,000) in augmentation of Item 4440-101-001 to provide for the first year of a three-year phasein of statewide system of care services.

(3) In order to provide for the second year of expansion of services under this part, the sum of nineteen million eight hundred twenty-three thousand dollars ($19,823,000) is hereby appropriated from the General Fund to the department in augmentation of the Budget Act of 1997 in accordance with the following schedule:

(A) One million nineteen thousand dollars ($1,019,000) in augmentation of Item 4440-001-001 to provide for departmental support for additional administrative costs associated with the augmentation contained in subparagraph (B).

(B) Eighteen million eight hundred four thousand dollars ($18,804,000) in augmentation of Item 4440-101-001 to provide for the second year expansion of the system of care services during the three-year statewide phasein.

(4) In order to provide for the third year of the statewide phasein of services under this part, the sum of twenty-six million ninety-one thousand dollars ($26,091,000) is hereby appropriated from the General Fund to the department in augmentation of the Budget Act of 1998, in accordance with the following schedule:

(A) One million nineteen thousand dollars ($1,019,000) in augmentation of Item 4440-001-001 to provide for departmental support for additional administrative costs associated with the augmentation contained in subparagraph (B).

(B) Twenty-five million seventy-two thousand dollars ($25,072,000) in augmentation of Item 4440-101-001 to provide for the additional system of care services for the third year of the statewide phasein of services under this part.

(b) The department shall enter into annual performance contracts with the selected counties and enter into training and consultation contracts as necessary to fulfill its obligations under this part. The contracts shall be exempt from the requirements of the Public Contract Code and the State Administrative Manual and shall be exempt from approval by the Department of General Services.

SEC. 4. Section 5869 of the Welfare and Institutions Code is amended to read:

5869. The department shall provide participating counties with all of the following:

(a) Request for proposal guidelines and format, and coordination and oversight of the selection process as described in Article 4 (commencing with Section 5857).

(b) Contracts with each state funded county stipulating the approved budget, performance outcomes, and scope of work.

(c) A contract with an independent evaluator for the purpose of measuring performance outcomes and providing technical assistance to the state and counties related to system evaluation.

(d) Training, consultation, and technical assistance for county applicants, either directly or through contract.

SEC. 5. Section 5870 of the Welfare and Institutions Code is amended to read:

5870. The State Department of Mental Health shall establish an advisory group comprised of, but not limited to, representatives from the State Department of Education, the State Department of Social Services, the State Department of Mental Health, the Secretary of Child Development and Education, the County Mental Health Directors Association, the County Welfare Directors Association, the Chief Probation Officers Association, the Special Education Local Planning Areas Directors Association, and service providers from the private sector. The function of the advisory group shall be to advise and assist the state and counties in the development of a coordinated, comprehensive children's services system under this part and other duties as defined by the Director of Mental Health.

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 California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the benefits of this act to be implemented prior to the commencement of the 1996–97 fiscal year, it must take effect immediately.

CHAPTER 1168

An act to add Section 12801.7 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 12801.7 is added to the Vehicle Code, to read:

12801.7. (a) The department shall not issue an original driver's license or identification card, or a renewal, duplicate, or replacement driver's license or identification card to any person for whom the department has received notice from the United States Immigration and Naturalization Service that the person has been determined and found by the United States Immigration and Naturalization Service to be a deported alien under Section 1252 of Title 8 of the United States Code.

(b) (1) The department shall cancel any driver's license or identification card issued to any person identified as specified in subdivision (a).

(2) The cancellation shall become effective on the 30th day after the date the cancellation notice is mailed to the person, except as authorized under paragraph (3).

(3) The person may request a review of the intended cancellation during the 30-day period specified in paragraph (2) and, if proof is provided to show the person is legally present in the United States as authorized under federal law, the department shall rescind the cancellation.

(4) The cancellation notice shall be mailed to the person's last known address.

(c) The department shall require an applicant for a driver's license whose license was canceled under this section to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law.

(d) This section shall become operative on, and apply only to persons determined and found to be a deported alien after, July 1, 1997.

CHAPTER 1169

An act to add Section 107.8 to, and to repeal and add Section 206.1 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 107.8 is added to the Revenue and Taxation Code, to read:

107.8. (a) For purposes of applying subdivision (a) of Section 107 to a lease-leaseback of publicly owned real property, the possession of, claim to, or right to the possession of, land or improvements pursuant to a lease is not independent if the lessee (1) is obligated simultaneously to sublease the property to the public owner of the

property for all or substantially all of the lease period, (2) may not exercise authority and exert control over the management or operation of the property separate and apart from the policies, statutes, ordinances, rules and regulations of the public owner, (3) provides as part of the sublease that the public owner has the right to repurchase all of the lessee's rights in the lease, and (4) cannot receive rent or other amounts from the public owner under the sublease (including any amounts due with respect to any repurchase) the present value of which, at the time the lease is entered into, exceeds the present value of the rent or other amounts payable by the lessee under the lease.

(b) For purposes of subdivision (a), the term "all or substantially all" means at least 85 percent.

SEC. 2. Section 206.1 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 206.1 is added to the Revenue and Taxation Code, to read:

206.1. (a) Pursuant to the authority of subdivision (d) of Section 4 of Article XIII of the California Constitution, and in accordance with subdivision (b) of this section, all real property that is necessarily and reasonably required for the parking of automobiles of persons who are attending religious services, or are engaged in religious services or worship or any religious activity, is exempt from taxation.

(b) For purposes of the exemption established by subdivision (a), all of the following shall apply:

(1) "Real property" means land and improvements or a possessory interest in land and improvements.

(2) The real property is not required to be contiguous to the land on which the church or other structure used for religious services or as the place of worship or religious activity is located.

(3) The real property is not at other times used for commercial purposes. For purposes of this paragraph, "commercial purposes" does not include use of the property for the parking of vehicles or bicycles, the revenue from which does not exceed the ordinary and necessary costs of maintaining the real property.

(4) The exemption shall apply to otherwise qualifying land and improvements regardless of whether the land and improvements are owned by the church, religious denomination, or sect using the land and improvements for the parking of automobiles by persons described in subdivision (a). However, the exemption shall apply to land and improvements that are not owned by the church, religious denomination, or sect using the land and improvements for the parking of automobiles by persons described in subdivision (a) only as long as all of the following conditions are met:

(A) The congregation of the church, religious denomination, or sect is no greater than 500 members.

(B) The church, religious denomination, or sect is engaged in a lease of the land and improvements for the exclusive purpose of the parking of automobiles by persons described in subdivision (a).

(C) The church, religious denomination, or sect is responsible, under the terms of its lease with the fee owner of the land and improvements, for paying the property taxes levied on the land and improvements. For purposes of this subparagraph, paying property taxes levied on land and improvements includes reimbursement paid to the fee owner of the land and improvements for those taxes.

(D) The real property is used exclusively for the parking of automobiles by persons described in subdivision (a).

(E) The fee owner of the real property and the county agree that the fee owner shall pay the total amount of taxes that would be levied on the real property for the current fiscal year and the first two subsequent fiscal years in the absence of a grant of exemption pursuant to this paragraph for the current fiscal year, if the real property is used for any purpose other than that specified in subparagraph (D) during either of those two subsequent fiscal years.

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 1170

An act to add Section 933.05 to the Penal Code, relating to grand juries.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 933.05 is added to the Penal Code, to read:

933.05. (a) For purposes of subdivision (c) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (c) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county department headed by an elected officer, both the department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected department head shall address all aspects of the findings or recommendations affecting his or her department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the supervising judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

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 1171

An act to amend Sections 32515 and 32517 of the Public Resources Code, relating to the San Joaquin River Conservancy.

[Approved by Governor September 30, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 32515 of the Public Resources Code is amended to read:

32515. (a) The governing board of the conservancy shall consist of nine voting members and four ex officio, nonvoting members.

(b) The nine voting members of the board shall consist of the following:

(1) One member of the Board of Supervisors of Fresno County appointed by a majority of the members of that board. A majority of the members of the Board of Supervisors of Fresno County may appoint an alternate member from that board.

(2) The Mayor of the City of Fresno or a member of the Fresno City Council designated by the Mayor of the City of Fresno. The Mayor of the City of Fresno may designate an alternate member from the Fresno City Council.

(3) One member of the Board of Supervisors of Madera County appointed by a majority of the members of that board. A majority of the members of the Board of Supervisors of Madera County may appoint an alternate from that board.

(4) The Mayor of the City of Madera or a member of the Madera City Council designated by the Mayor of the City of Madera. The Mayor of the City of Madera may designate an alternate member from the Madera City Council.

(5) (A) Except as provided in subparagraph (C), one resident of Fresno County appointed by the Board of Supervisors of Fresno County from a list submitted by environmental organizations within that county. The board of supervisors may establish additional criteria for that appointment.

(B) Except as provided in subparagraph (C), one resident of Madera County appointed by the County Board of Supervisors of Madera County who is a property owner of San Joaquin River bottom. The board of supervisors may establish additional criteria for that appointment.

(C) Fresno County and Madera County shall rotate appointment qualifications pursuant to this paragraph so that each alternative time Madera County shall appoint a resident from a list submitted by environmental organizations within that county and Fresno County shall appoint a property owner of San Joaquin River bottom in that county.

(6) One resident of the City of Fresno appointed by the Fresno City Council. The city council may establish criteria for that appointment.

(7) The Executive Director of the Wildlife Conservation Board or a member of his or her executive staff designated by the executive director.

(8) The Secretary of the Resources Agency or a member of his or her executive staff designated by the secretary.

(c) The four ex officio, nonvoting members shall consist of the following officers or an employee of each agency designated annually by that officer to represent the office:

(1) The General Manager of the Fresno Metropolitan Flood Control District.

(2) The General Manager of the Madera Irrigation District.

(3) The Director of Fish and Game or a member of his or her executive staff designated by the director.

(4) The Director of Parks and Recreation or a member of his or her executive staff designated by the director.

SEC. 2. Section 32517 of the Public Resources Code is amended to read:

32517. The voting members of the board shall serve for four-year terms. Any member who is an elected or appointed official who ceases to hold that office shall automatically cease to be a member of the board. The office of any member of the board who is required to be a resident of a member agency shall become vacant upon that member ceasing to be a resident of the member agency.

CONCURRENT AND JOINT RESOLUTIONS AND CONSTITUTIONAL AMENDMENTS

1995–96

REGULAR SESSION

1996 RESOLUTION CHAPTERS

RESOLUTION CHAPTER 1

Assembly Joint Resolution No. 44—Relative to forced labor.

[Filed with Secretary of State February 1, 1996.]

WHEREAS, In a complaint to the Los Angeles office of the United States Immigration and Naturalization Service ("the INS") in 1991, INS Special Agent Phillip L. Bonner reported that his supervisors prevented him from investigating sewing shops that may have been using forced Thai labor; and

WHEREAS, It has been reported that a Thai-speaking police officer in the Los Angeles Police Department reported, in an affidavit to the INS, an accurate description of the labor conditions that were subsequently discovered in the sewing shop raid in El Monte, California; and

WHEREAS, Reports of that raid disclose the existence of labor conditions involving the exploitation of undocumented immigrants through slavery and involuntary servitude in contravention of Section 6 of Article I of the California Constitution and the Thirteenth Amendment to the United States Constitution; and

WHEREAS, The State of California encourages a cooperative effort for open communication between all state and federal agencies that are involved in the enforcement of fair labor standards; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature memorializes the United States Department of Justice and the United States Department of Labor to conduct jointly a full and comprehensive investigation of the events that led to the sewing shop raid in El Monte, California, coordinating that investigation with all agencies involved, including, but not limited to, the INS and the Division of Labor Standards Enforcement of the California Department of Industrial Relations; and be it further

Resolved, That the United States Department of Justice and the United States Department of Labor are further memorialized to provide to the California Legislature a preliminary report of the results of that investigation within 30 days of the date this resolution is adopted, and a final report of the results of that investigation within 90 days after that date; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, the President and Vice President of the United States, the United States Department of Justice, the United States Department of Labor, the United States Immigration and Naturalization Service, the Speaker of the House of Representatives, each Senator and Representative from California in

the Congress of the United States, the California Department of Industrial Relations, and the Los Angeles Police Department.

RESOLUTION CHAPTER 2

Senate Concurrent Resolution No. 44—Relative to College Awareness Month.

[Filed with Secretary of State February 13, 1996.]

WHEREAS, The California Education Round Table and its Intersegmental Coordinating Committee are sponsoring February 1996 as "College Awareness Month;" and

WHEREAS, California needs a college-educated work force in order for it to maintain a strong and vibrant economy, a cohesive society, and an effective democracy; and

WHEREAS, California is disadvantaged when students leave high school before they graduate—a situation that happens too frequently—or graduate without the necessary skills to participate productively in the state's future; and

WHEREAS, Parents have important responsibilities in encouraging their daughters and sons to master the skills in elementary and secondary school that will prepare them to pursue a college education; and

WHEREAS, California's educational community will be conducting a statewide campaign during the month of February to provide parents with information that will assist them in serving as academic advisers and financial planners for their daughters and sons so that they can graduate from college; and

WHEREAS, Students have to learn the skills, competencies, and behaviors that will enable them to have a variety of choices after high school graduation, including entering and succeeding in college; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California hereby supports the actions of the California Education Round Table by proclaiming February 1996, as "College Awareness Month;" and be it further

Resolved, That the Legislature urges the residents of California to encourage elementary and secondary school students to succeed in their academic endeavors so that they may earn a college education and contribute to the economic, social, and political future of this state; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 3

Assembly Concurrent Resolution No. 53—Relative to Random Acts of Kindness Week.

[Filed with Secretary of State February 14, 1996.]

WHEREAS, Random acts of kindness are those sweet or lovely things that we do for no reason except that, momentarily, the best of our humanity has sprung into full bloom; and

WHEREAS, In 1982, an individual named Ann Herbert penned a very special phrase—"Practice random kindness and senseless acts of beauty"; and

WHEREAS, Random Acts of Kindness Week is a way to counteract random acts of violence, and the first Random Acts of Kindness Week took place in February 1995; since then, the nonprofit Random Acts of Kindness Foundation has been formed, and orchestrates the annual awareness campaign each February; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of February 12 through February 18, 1996, be recognized as Random Acts of Kindness Week, and that the public be urged to observe this week with appropriate individual or group activities; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 4

Assembly Concurrent Resolution No. 52—Relative to Celebrating California Nonprofits Week.

[Filed with Secretary of State February 15, 1996.]

WHEREAS, There are 120,000 nonprofit organizations in California that employ over 750,000 people and receive and spend over $50 billion a year; and

WHEREAS, Nonprofit health organizations account for 50 percent of the state's nonprofit revenue and 40 percent of its nonprofit employees; and

WHEREAS, Nonprofit long-term nursing and personal care facilities have higher per patient revenues and lower labor costs; and

WHEREAS, Nonprofit education is the second largest segment of the nonprofit sector with 110,000 workers and $8 billion in expenditures; and

WHEREAS, The revenue of social service organizations doubled from $3 billion to $6 billion between 1982 and 1992; and

WHEREAS, There are 2,741 independent foundations, 100 corporate foundations, and 25 community foundations with assets of $18 billion that annually make $1 billion in grants, and California has seven of the nation's largest independent foundations, and seven of the nation's largest community foundations; and

WHEREAS, 24,000 religious organizations employ 10 percent of the states nonprofit workers and serve 13 million members; and

WHEREAS, There are 44,000 mutual benefit organizations; and

WHEREAS, Nonprofits play a vital role in our society by contributing positively to the health and welfare of the vast majority of Californians; and

WHEREAS, There are an estimated 11,000 nonprofit community service organizations, including advocacy, community improvement, community service, environmental protection, and animal welfare groups; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature supports and praises the state's many nonprofit organizations for their significant contributions to the economic and social growth and environmental and cultural well-being of the State of California, through the acknowledgement and designation of the week of February 5, 1996, as "Celebrating California Nonprofits Week"; and be it further

Resolved, That the Chief Clerk of the Assembly transmits copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 5

Assembly Concurrent Resolution No. 58—Relative to Black History Month.

[Filed with Secretary of State February 28, 1996.]

WHEREAS, Americans of African descent helped develop our nation in countless ways, those recognized, unrecognized, and unrecorded; and

WHEREAS, The contributions of Black American citizens as scientists, inventors, educators, farmers, homemakers, and explorers of earth and sky have been recognized annually during Black History Month; and

WHEREAS, The history and contributions of Black American citizens were consistently overlooked and undervalued in the

curricula of public educational institutions prior to the Civil Rights Act of 1964; and

WHEREAS, Carter Goodwin Woodson, a Black historian, recognized these accomplishments and, on February 7, 1926, created one of the cultural landmarks of contemporary America, "Negro History Week;" and

WHEREAS, In the 1960's, during the height of the Civil Rights Movement, "Negro History Week" was changed to "Black History Week," and in 1976 was expanded to "Black History Month" as part of the national Bicentennial Celebration; and

WHEREAS, Innumerable Black citizens have contributed to the history of California, including the first Black citizen elected to the California Legislature, former Assembly Member Frederick Roberts, who served his constituents from 1918 to 1934; and

WHEREAS, The 1996 theme for Black History Month is "African-American Women: Yesterday, Today, and Tomorrow," asking all Americans to remember the contributions that African-American women have made to this nation and this world, the battles fought, and the battles that must continue to be fought to ensure a place in history for African-American women and African-American men; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the month of February 1996, be proclaimed as Black History Month; and be it further

Resolved, That each house of the Legislature commemorate Black History Month with appropriate, meaningful activities that recognize the contributions of Black Americans to their community, state, and nation; and be it further

Resolved, That the Chief Clerk of the Assembly prepare suitably prepared copies of this resolution for appropriate distribution.

RESOLUTION CHAPTER 6

Assembly Concurrent Resolution No. 56—Relative to Mediation Week.

[Filed with Secretary of State March 6, 1996.]

WHEREAS, The legal needs of our society have increased dramatically; and

WHEREAS, In an effort to ameliorate these conditions, restore harmony, improve relations between citizens and within neighborhoods and families, and relieve the growing burden on our judiciary, many of our citizens have turned to dispute resolution services, with resultant social and economic benefits; and

WHEREAS, Mediation, which provides parties with a simplified and economical procedure for obtaining prompt and equitable resolution of their disputes and a greater opportunity to participate directly in resolving their disputes, has proven over the years to be one of the most effective of these alternative dispute resolution techniques; and

WHEREAS, California has had mandatory mediation of child custody and visitation disputes since 1981, and evaluations of these programs have found that mediation has resulted in the resolution of over two-thirds of the mediated disputes and achieved a high satisfaction rate among the participants; and

WHEREAS, Studies by the Rand Corporation and others show that the use of mediation and other appropriate alternative dispute resolution processes can reduce the time, cost, and stress of resolving disputes in many cases, both to disputants, by reducing costs for such things as expert witnesses and trial preparation, and to the justice system as a whole by as much threefold to fivefold over the cost of traditional court processing of civil cases; and

WHEREAS, The State Bar of California and many local bar associations are engaged in promoting the use of mediation and raising public consciousness about its merits, and are seeking to increase public use of, and support for, alternative dispute resolution applications; and, to that end, are cooperating in many activities to assist counties and dispute resolution providers in their efforts at serving citizens; and

WHEREAS, The State of California now has thousands of citizens trained as mediators and many agencies, organizations, and attorneys who specialize in providing related services and ready assistance to those in need of services; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby designates the week of March 17 to March 23, 1996, inclusive, as Mediation Week, in order to afford an opportunity for the citizens of California to become aware of the availability of mediation and other alternative dispute resolution techniques as options for solving their legal problems, and to express sincere appreciation to our citizens who are working diligently in assisting fellow citizens and businesses in the resolution of conflict and the settlement of disputes; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 7

Assembly Concurrent Resolution No. 51—Relative to proclaiming the Week of the School Administrator.

[Filed with Secretary of State March 8, 1996.]

WHEREAS, Approximately 17,000 certificated and classified school administrators work in California's public schools; and

WHEREAS, Nearly 65 percent of these administrators are principals and vice principals providing direct support for the educational programs at schoolsites; and

WHEREAS, Research has determined that one of the main attributes of effective schools is the competent leadership of principals; and

WHEREAS, Other certificated and classified administrators provide leadership and support for the educational programs by developing and implementing the curriculum, selecting textbooks and instructional materials, recruiting, training, and evaluating classified and certificated staff, managing the budget and monitoring cost controls, implementing school board policies and complying with federal, state, and local regulations and laws, planning and maintaining school facilities, and providing transportation, nutrition, and social service programs to pupils and their families; and

WHEREAS, Research shows that efficient district-level administration improves teacher effectiveness; and

WHEREAS, Research shows that public school administration in California has become increasingly efficient and effective, with fewer administrators managing more schools with more pupils than in the past; and

WHEREAS, A school's administrative team includes confidential employees who perform and assist in the performance of many critical functions; and

WHEREAS, School administrators and confidential employees ensure that effective and innovative classroom instruction is promoted in every area of California; now, therefore, be it

Resolved, by the Assembly of the State of California, the Senate thereof concurring, That the week of March 4 through March 8, 1996, is hereby proclaimed the Week of the School Administrator, in honor of the many outstanding contributions and services provided by the administrative teams in California's public school districts; and be it further

Resolved, That the administrators of California's public schools be commended for their support of, and contributions to, quality education in the state; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 8

Assembly Concurrent Resolution No. 55—Relative to Jewish veterans.

[Filed with Secretary of State March 11, 1996.]

WHEREAS, Servicemen and women of the Jewish faith have served proudly in every branch of the United States armed forces, receiving commendation and high honors; and

WHEREAS, History records that Jewish soldiers fought bravely and died heroically in every war in which this nation has participated; and

WHEREAS, Commencing with the Civil War 15 Jewish servicemen have received the Congressional Medal of Honor, our nation's highest military award for bravery; and

WHEREAS, In 1996, the Jewish War Veterans of the United States of America will be celebrating its 100th anniversary as the nation's oldest, active national veterans' organization; and

WHEREAS, During the century of service to this country, the members of the Jewish War Veterans of the United States of America have dedicated themselves to promoting the welfare and special needs of all veterans, promoted Americanism and patriotism, combated anti-Semitism and racism wherever it has occurred, advocated the doctrine of universal rights and eternal freedom for all Americans; and

WHEREAS, By instilling love of country, promoting awareness in community, honoring the memories of those who have made the ultimate sacrifice in defense of this nation, and tending the graves of the fallen, the Jewish War Veterans of the United States of America has helped create a better place in which to live; and

WHEREAS, This Legislature believes that it is fitting and proper to honor the contributions of the Jewish War Veterans of the United States of America for all that organization's worthwhile endeavors; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of March 10 to March 17 is proclaimed to be Jewish War Veterans of the United States of America Week; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a suitably prepared copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 9

Senate Concurrent Resolution No. 47—Relative to television and radio broadcasters day.

[Filed with Secretary of State March 12, 1996.]

WHEREAS, California has a large and diverse population served by 84 television stations and 426 radio stations; and

WHEREAS, Studies show that most Americans get their news, information, and entertainment from radio and television; and

WHEREAS, Television and radio provide an invaluable service in distributing vital and often lifesaving information during times of crisis; and

WHEREAS, Broadcasters provide a forum to air, examine and shape the diversity of interests that constitute our society and serve as a mirror reflecting the views and opinions of the communities they serve; and

WHEREAS, Broadcasters contribute to the local economies they serve by facilitating advertising, thus promoting business; and

WHEREAS, Broadcasters are active members within the communities they serve, assisting in community projects and community organizations; and

WHEREAS, Broadcast radio is celebrating its 75th year as an integral part of American society, with radio reaching 77 percent of all consumers everyday; and

WHEREAS, Television embodies the tremendous potential of the media as a captivating tool to reach people of all ages and abilities with education ideas and opinions; and

WHEREAS, Broadcasters allow the entire nation, from large cities to small towns, to instantaneously be informed and connected to the events occurring in the world around them and this instantaneous information is the cornerstone of democracy; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That March 18, 1996, be declared Television and Radio Broadcasters Day, as the Legislature deeply appreciates the daily contributions broadcasters provide to the quality of life in California.

RESOLUTION CHAPTER 10

Assembly Joint Resolution No. 56—Relative to the Israeli-Palestinian Interim Agreement.

[Filed with Secretary of State March 13, 1996.]

WHEREAS, The Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip signed on September 28, 1995, called for a strong effort to prevent terrorism and violence; and

WHEREAS, The security annex to the agreement specifies the commitment of Israel and the Palestinian Council to cooperate in the fight against terrorism and the prevention of terrorist attacks; and

WHEREAS, The Palestinian Council is empowered to exercise authority on these matters in areas under control of the Palestinian Authority; and

WHEREAS, The tragic attacks in Jerusalem and Askelon on February 25, 1996, were committed by terrorists whose infrastructure is within the boundaries of the Palestinian Authority; and

WHEREAS, Yasser Arafat was elected chairman of the Palestinian Authority; and

WHEREAS, The Palestinian Authority has control of areas where there is an infrastructure of terrorism and terrorists; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California memorializes the President and the Congress of the United States to urge Chairman Yasser Arafat to exercise his authority and leadership to enforce the provisions of the Israeli-Palestinian Interim Agreement by moving forcefully to curtail terrorism; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President of the United States, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 11

Senate Concurrent Resolution No. 45—Relative to Women's History Month.

[Filed with Secretary of State March 20, 1996.]

WHEREAS, American women of every race, class, and ethnicity have participated in the founding and building of our nation and have played a critical role in shaping the economic, cultural, and social fabric of our society, not in the least of ways through their participation in the labor force, working both inside and outside the home; and

WHEREAS, Women have been leaders in every movement for social change, including their own movement for suffrage, the fight for emancipation, the struggle to organize labor unions, and the civil rights movement; and

WHEREAS, In light of these efforts and the achievements of all American women we take this opportunity to honor women and their contribution to the development of our society and our world; and

WHEREAS, The celebration of Women's History Month will provide an opportunity for schools and communities to focus attention on the historical role and accomplishments of the women of California and the United States, and for students, in particular, to benefit from an awareness of these contributions; and

WHEREAS, Women's History Month will include International Women's Day on March 8, originally proclaimed in 1910 to recognize and commemorate the valuable contributions women have made to the labor movement in improving working conditions and thus, bettering people's lives; and

WHEREAS, Women's History Month will be not only a call to acknowledge the outstanding American women whose names we know, but also a call to pay homage to the many women who have anonymously shaped our collective past; and

WHEREAS, The observance of Women's History Week was initiated by the Sonoma County Commission on the Status of Women in 1978, a celebration that evolved into Women's History Month, commemorated throughout the nation by schools, historians, and community groups; and

WHEREAS, The achievements of women who have gone before us will enable contemporary women and men to create tomorrow's history by working toward an end to physical and sexual violence against women, discrimination and harassment in employment, the relegation to poverty status of many women, and by advocating for the full participation of women in the economic and political arena, the provision of adequate child care, respect for those who choose homemaking and motherhood as their career, and equal access to all of the opportunities this great nation has to offer; and

WHEREAS, The story of the women's rights movement deserves telling because of the significance and scope of women's role in making history and shaping the cultural and societal makeup of California and the United States, and because it is a rich part of our common heritage, a story of gallantry and devotion to the belief that the opportunity for complete human dignity should not be denied to one-half of the state and the nation; and

WHEREAS, The National Women's History Project has adopted "See History in a New Way" as the 1996 theme for Women's History Month, inviting all Californians to see women's lives and accomplishments as an essential part of our national history, recognizing that history looks very different when the contributions, accomplishments, and perspectives of women are added to our shared legacy as Americans, thereby increasing our understanding of the world in which we live today and expanding our possibilities for the future; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California takes pleasure in joining the California Commission on the Status of Women, the Sonoma County Commission on the Status of Women, the Los Angeles County Commission for Women, and other city, county, and community commissions for women in California, in honoring the contributions of women, and proclaims the month of March 1996 as Women's History Month; and be it further

Resolved, That the Legislature of the State of California urges all Californians to join in the celebration of International Women's Day on March 8, 1996; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Chair of the California Commission on the Status of Women, the Chair of the Sonoma County Commission on the Status of Women, and the National Women's History Project, for distribution to appropriate organizations.

RESOLUTION CHAPTER 12

Senate Joint Resolution No. 13—Relative to public lands.

[Filed with Secretary of State March 27, 1996.]

WHEREAS, The Secretary of the Interior has proposed rules concerning R.S. 2477, rights-of-way on public lands, and these proposed rules would create a hardship on the state; and

WHEREAS, Longstanding and previously accepted public property rights could be legislatively extinguished, because the rule requires all public rights-of-way across lands administered by the Bureau of Land Management, National Park Service, and Fish and Wildlife Service to be reclaimed within two years, and a failure to reclaim these lands would constitute an automatic relinquishment of the rights-of-way; and

WHEREAS, The burden of proving the validity of all existing public rights-of-way is placed upon the local government and the proposed rules would require local governments to immediately initiate a labor-intensive and time-consuming validity determination process; and

WHEREAS, In view of the fact that most rural governmental agencies would not have sufficient staff or funding to comply with the proposed federal validity requirements, the likely result is a loss of many public rights-of-way; and

WHEREAS, Where a valid right-of-way is subsequently recognized by the Department of the Interior, maintenance or reconstruction activities associated with the right-of-way, that occurred after October 1976, may be deemed an unauthorized use or trespass; and

WHEREAS, The determination of validity will be vested in the "authorized officer" which is defined as the Director of the Bureau of Land Management, the Regional Director of the United States Department of Fish and Wildlife, and the Regional Director of the National Parks Service, or a combination of those officials; and

WHEREAS, Compliance with, and interpretation of, those validity determination requirements will most likely result in a complex bureaucratic process for local governmental agencies; and

WHEREAS, During the validity determination process, routine maintenance activities could be denied because they would be subject to review and approval by the appropriate federal agency; and

WHEREAS, In the event of an accident, that delay could result in serious liability issues for the local government previously responsible for maintenance of the right-of-way; and

WHEREAS, R.S. 2477, constitutes another significant unfunded federal mandate, and illustrates the problems created by the proliferation of unfunded mandates; and

WHEREAS, The costs incurred as a result of the validity determination process would not be reimbursed by the federal government and the process could result in forfeiture of rights-of-way by those local governments unable to bear the costs of the process; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to enact legislation that would temporarily prevent the Secretary of the Interior from implementing the proposed rule changes regarding R.S. 2477, as published August 1, 1994, in the Federal Register governing rights-of-way access across federal public lands, until such time that Congress can reexamine the issue of public rights-of-way in collaboration with affected states, local governments, landowners, and the general public; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Secretary of the Interior, the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 13

Assembly Concurrent Resolution No. 70—Relative to California Holocaust Memorial Week.

[Filed with Secretary of State April 12, 1996.]

WHEREAS, More than 50 years have passed since the tragic events we now call the Holocaust transpired in which the dictatorship of Nazi Germany murdered six million Jews as part of a systematic program of genocide known as "The Final Solution of the Jewish Question"; and

WHEREAS, The Holocaust was a tragedy of proportions the world had never witnessed; and

WHEREAS, We must be reminded of the reality of the Holocaust's horrors so they will never be repeated; and

WHEREAS, Each person in the State of California should set aside moments of his or her time every year to give remembrance to those who lost their lives in the Holocaust; and

WHEREAS, The United States Holocaust Memorial Council has designated the week of April 14 through April 20, 1996, as Holocaust Memorial Week-Days of Remembrance for Victims of the Holocaust; and

WHEREAS, April 15, 1996, is Yom HaSho'ah, and has been designated internationally as a day of remembrance for victims of the Holocaust; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of April 14 through April 20, 1996, be proclaimed as California Holocaust Memorial Week, and that Californians are urged to observe these days of remembrance for victims of the Holocaust in an appropriate manner; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 14

Senate Concurrent Resolution No. 1—Relative to the adoption of the Joint Rules of the Senate and Assembly for the 1995–96 Regular Session.

[Filed with Secretary of State April 19, 1996.]

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the following rules be adopted as the Joint Rules of the Senate and Assembly for the 1995–96 Regular Session.

JOINT RULES OF THE SENATE AND ASSEMBLY

Standing Committees

1. Each house shall appoint such standing committees as the business of the house may require, the committees, the number of

members, and the manner of selection to be determined by the rules of each house.

Joint Meeting of Committees

3. Whenever any bill has been referred by the Senate to one of its committees, and the same or a like bill has been referred by the Assembly to one of its committees, the chairmen or chairwomen of the respective committees, when in their judgment the interests of legislation or the expedition of business will be better served thereby, shall arrange for a joint meeting of their committees for the consideration of such bill.

Effect of Adoption of Joint Rules

3.5. The adoption of the Joint Rules for any extraordinary session shall not be construed as modifying or rescinding the Joint Rules of the Senate and Assembly for any previous session, nor as affecting in any way the status or powers of the committees created by those rules.

Definition of Word "Bill"

4. Whenever the word "bill" is used in these rules, it shall include constitutional amendments, resolutions ratifying proposed amendments to the United States Constitution, and resolutions calling for constitutional conventions.

Concurrent and Joint Resolutions

5. Concurrent resolutions relate to matters to be treated by both houses of the Legislature.

Joint resolutions are those which relate to matters connected with the federal government.

Resolutions Treated as Bills

6. Concurrent and joint resolutions, other than resolutions ratifying proposed amendments to the United States Constitution and resolutions calling for constitutional conventions, shall be treated in all respects as bills except as follows:

(a) They shall be given only one formal reading in each house.

(b) They shall not be deemed bills within the meaning of subdivision (a) of Section 8 of Article IV of the California Constitution.

(c) They shall not be deemed bills for the purposes of Rules 10.8, 53, 55, 56, and 61, and subdivisions (a) and (c) of Rule 54 and subdivisions (a) and (b) of Rule 62.

(d) They shall not, except for those relating to voting procedures on the floor or in committee, be deemed bills for the purposes of subdivision (c) of Rule 62.

PREPARATION AND INTRODUCTION OF BILLS

Title of Bill

7. The title of every bill introduced shall convey an accurate idea of the contents of the bill and shall be indicative of the scope of the act and the object to be accomplished. In amending a code section, the mere reference to the section by number shall not be deemed sufficient.

Division of Bill Into Sections

8. A bill amending more than one section of an existing law shall contain a separate section for each section amended.

Bills which are not amendatory of existing laws shall be divided into short sections, where this can be done without destroying the sense of any particular section, to the end that future amendments may be made without the necessity of setting forth and repeating sections of unnecessary length.

Digest of Bills Introduced

8.5. No bill shall be introduced unless it is contained in a cover attached by the Legislative Counsel and unless it is accompanied by a digest, prepared and attached to the bill by the Legislative Counsel, showing the changes in the existing law which are proposed by the bill. No bill shall be printed where the body of the bill or the Legislative Counsel's Digest has been altered, unless the alteration has been approved by the Legislative Counsel. If any bill is presented to the Secretary of the Senate or Chief Clerk of the Assembly for introduction, which does not comply with the foregoing requirements of this rule, the Secretary or Chief Clerk shall return it to the member who presented it. The digest shall be printed on the bill as introduced, commencing on the first page thereof.

Digest of Bills Amended

8.6. Whenever a bill is amended in either house, the Secretary of the Senate or the Chief Clerk of the Assembly, as the case may be, shall request the Legislative Counsel to prepare an amended digest and cause it to be printed on the first page of the bill as amended. The digest shall be amended to show changes in the existing law which are proposed by the bill as amended with any material changes in the digest indicated by the use of appropriate type.

Errors in Digest

8.7. If a material error in a printed digest referred to in Rule 8.5 or 8.6 is brought to the attention of the Legislative Counsel, he or she shall prepare a corrected digest which shall show the changes made in the digest as provided in Rule 10 for amendments to bills. He or she shall deliver the corrected digest to the Secretary of the Senate or the Chief Clerk of the Assembly, as the case may be. If the correction warrants it in the opinion of the President pro Tempore of the Senate or the Speaker of the Assembly, a corrected print of the bill as introduced shall be ordered with the corrected digest printed thereon.

Bills Amending Title 9 of the Government Code

8.8. A member who is the first-named author of a bill which would amend, add, or repeal any provision of Title 9 (commencing with Section 81000) of the Government Code, upon introduction or amendment of such bill in either house shall notify the Chief Clerk of the Assembly or the Secretary of the Senate, as the case may be, of the nature of such bill. Thereafter, the Chief Clerk of the Assembly or the Secretary of the Senate shall deliver a copy of such bill as introduced or amended to the Fair Political Practices Commission pursuant to Section 81012 of the Government Code.

Restrictions as to Amendments

9. A substitute or amendment must relate to the same subject as the original bill, constitutional amendment, or resolution under consideration. No amendment shall be in order when all that would be done to the bill is the addition of a coauthor or coauthors, unless the Rules Committee of the house in which such an amendment is to be offered grants prior approval.

Changes in Existing Law to Be Marked by Author

10. In a bill amending or repealing a code section or a general law, any new matter shall be underlined and any matter to be omitted shall be in type bearing a horizontal line through the center and commonly known as "strikeout" type. When printed the new matter shall be printed in italics, and the matter to be omitted shall be printed in "strikeout" type.

In any amendment to a bill which sets out for the first time a section being amended or repealed, any new matter to be added and any matter to be omitted shall be indicated by the author and shall be printed in the same manner as though the section as amended or repealed were a part of the original bill and was being printed for the first time.

When an entire code is repealed as part of a codification or recodification or when an entire title, part, division, chapter, or article of a code is repealed, the sections comprising such code, title, part, division, chapter, or article shall not be set forth in the bill or amendment in strikeout type.

Rereferral to Fiscal and Rules Committees

10.5. Bills shall be rereferred to the fiscal committee of each house when they would do any of the following:

(1) Appropriate money.

(2) Result in substantial expenditure of state money by: (a) imposing new responsibilities on the state or (b) imposing new or additional duties on a state agency or (c) liberalizing any state program, function, or responsibility.

(3) Result in a substantial loss of revenue to the state.

(4) Result in substantial reduction of expenditures of state money by reducing, transferring, or eliminating any existing responsibilities of any state agency, program, or function.

Concurrent and joint resolutions shall be rereferred to the fiscal committee of each house when they contemplate any action which would involve any of the following:

(1) Any substantial expenditure of state money.

(2) Any substantial loss of revenue to the state.

The above requirements do not apply to bills or concurrent resolutions which contemplate the expenditure or allocation of operating funds.

A bill which assigns a study to the Joint Legislative Budget Committee or to the Legislative Analyst shall be rereferred to the respective rules committees. Before the committee shall act upon such bill, it shall obtain from the Joint Legislative Budget Committee an estimate of the amount required to be expended to make the study.

This rule may be suspended in either house as to any particular bill by approval of the Committee on Rules of the house and two-thirds vote of the membership of the house.

Heading of Bills

10.7. No bill shall indicate in its heading or elsewhere that it was introduced at the request of a state agency or officer or any other person. No bill shall contain the words "By request" or words of similar import.

Consideration of Bills

10.8. The limitation contained in subdivision (a) of Section 8 of Article IV of the Constitution may be dispensed with as follows:

(a) A written request for such dispensation entitled "Request to Consider and Act on Bill Within 30 Calendar Days" shall be filed with the Chief Clerk of the Assembly or the Secretary of the Senate, as the case may be, and transmitted to the Committee on Rules of the appropriate house.

(b) The Committee on Rules of the Assembly or Senate, as the case may be, shall determine whether there exists an urgent need for dispensing with the 30-calendar-day waiting period following the bill's introduction.

(c) If the Committee on Rules recommends that the waiting period be dispensed with, the member may offer a resolution, without further reference thereof to committee, authorizing hearing and action upon the bill before the 30 calendar days have elapsed. The adoption of the resolution shall require an affirmative recorded vote of three-fourths of the elected members of the house in which the resolution is presented.

Printing of Amendments

11. (a) All bills amended by either house shall be immediately reprinted. Except as otherwise provided in subdivision (b), if new matter is added by the amendment, the new matter shall be printed in italics in the printed bill; if matter is omitted, the matter to be omitted shall be printed in strikeout type. When a bill is amended in either house, the first or previous markings shall be omitted.

(b) If amendments to a bill, including the report of a committee on conference, are adopted that omit the entire contents of the bill, the matter omitted need not be reprinted in the amended version of the bill. Instead, the Secretary of the Senate or the Chief Clerk of the Assembly, as the case may be, may select any such amended bill and cause to be printed a brief statement to appear after the last line of the amended bill identifying which previously printed version of the bill contains the complete text of the omitted matter.

Manner of Printing Bills

12. The State Printer shall observe the directions of the Joint Rules Committee in printing all bills, constitutional amendments, and concurrent and joint resolutions.

Distribution of Legislative Publications

13. The Secretary of the Senate and the Chief Clerk of the Assembly shall order a sufficient number of bills and legislative publications as may be necessary for legislative requirements.

No complete list of bills shall be delivered except upon payment therefor of such sum as may be fixed by the Joint Rules Committee for any regular or extraordinary session. No more than one copy of

any bill or other legislative publication, nor more than a total of 100 bills or other legislative publications during a session, shall be distributed free to any person, office, or organization. The limitations imposed by this paragraph do not apply to Members of the Legislature, the President of the Senate, the Secretary of the Senate and the Chief Clerk of the Assembly for the proper functioning of their respective houses; the Legislative Counsel Bureau; Attorney General's office; Secretary of State's office; Controller's office; Governor's office; the Clerk of the Supreme Court; the clerk of the court of appeal for each district; the Judicial Council; the California Law Revision Commission; the State Library; the Library of Congress; the libraries of the University of California at Berkeley and at Los Angeles; and accredited members of the press. The State Printer shall fix the cost of such bills and publications, including postage, and such moneys as may be received by him or her shall, after deducting the cost of handling and mailing, be remitted on the first day of each month, one-half each to the Secretary of the Senate and the Chief Clerk of the Assembly for credit to legislative printing. Legislative publications heretofore distributed through the Bureau of Documents shall be distributed through the Bill Room. Unless otherwise provided for, the total number of each bill to be printed shall not be more than 2,500.

Legislative Index

13.1. The Legislative Counsel shall provide for the periodic publication of a cumulative Legislative Index which shall include tables of sections affected by pending legislation. The State Printer shall print the Legislative Index in such quantities, and at such times, as are determined by the Secretary of the Senate and the Chief Clerk of the Assembly. The costs of such printing shall be paid from the legislative printing appropriation.

Summary Digest

13.3. The Legislative Counsel shall compile and prepare for publication a summary digest of legislation passed at each regular and extraordinary session, which digest shall be prepared in a form suitable for inclusion in the publication of statutes. The digest shall be printed as a separate legislative publication on the order of the Joint Rules Committee and may be made available to the public in such quantities and at such prices as the Joint Rules Committee may determine.

Statutory Record

13.5. The Legislative Counsel shall prepare for publication from time to time a cumulative statutory record. The statutory record shall

be printed as a legislative publication on the order of the Secretary of the Senate or the Chief Clerk of the Assembly.

OTHER LEGISLATIVE PRINTING

Printing of the Daily Journal

14. The State Printer shall print in such quantity as directed by the Secretary of the Senate and the Chief Clerk of the Assembly, copies of the journal of each day's proceedings of each house. At the end of the session he or she shall also print, as directed by the Secretary of the Senate and the Chief Clerk of the Assembly a sufficient number of copies properly paged after being corrected and indexed by the Secretary of the Senate and the Chief Clerk of the Assembly, to bind in book form as the journal of the respective houses of the Legislature.

What Shall Be Printed in the Journal

15. The following shall be printed in the journal of each house:

(a) Messages from the Governor and messages from the other house, and the titles of all bills, joint and concurrent resolutions, and constitutional amendments when introduced in, offered to, or acted upon by the house.

(b) Every vote taken in the house, and a statement of the contents of each petition, memorial, or paper presented to the house.

(c) A true and accurate account of the proceedings of the house, when not acting as a Committee of the Whole.

Printing of the Daily File

16. A daily file of bills ready for consideration shall be printed each day for each house when the Legislature is not in joint recess except days when a house does not meet.

Printing of History

17. Each house shall cause to be printed, once each week, a complete history of all bills; constitutional amendments; and concurrent, joint, and house resolutions originating in, considered, or acted upon by the respective houses and committees thereof. A regular form shall be prescribed by the Secretary of the Senate and the Chief Clerk of the Assembly. Such history shall show the action taken upon each measure up to and including the legislative day preceding its issuance. Except for periods when the houses are in joint recess, for each day intervening there shall be printed a daily history showing the consideration given to or action taken upon any measure since the issuance of the complete history.

Authority for Printing Orders

18. The State Printer shall not print for use of either house nor charge to legislative printing any matter other than provided by law or by the rules, except upon a written order signed by the Secretary of the Senate, on behalf of the Senate, or the Chief Clerk of the Assembly or other person authorized by the Assembly, on behalf of the Assembly. Persons authorized to order printing under this rule may, when necessity requires it, order certain matter printed in advance of the regular order, by the issuance of a rush order.

The Secretary of the Senate, on behalf of the Senate, and the Chief Clerk of the Assembly or other person authorized by the Assembly, on behalf of the Assembly, are hereby authorized and directed to order and distribute for the members stationery and legislative publications for which there is a demand, and, subject to the rules of their respective houses, to approve the bills covering such orders. All bills for printing must be presented by the State Printer within 30 days after the completion of the printing.

RECORD OF BILLS

Secretary and Chief Clerk to Keep Records

19. The Secretary of the Senate and the Chief Clerk of the Assembly shall keep a complete and accurate record of every action taken by the Senate and Assembly on every bill.

Secretary and Chief Clerk Shall Endorse Bills

20. The Secretary of the Senate and the Chief Clerk of the Assembly shall endorse on every original or engrossed bill a statement of any action taken by the Senate or Assembly concerning such bill.

ACTION IN ONE HOUSE ON BILL TRANSMITTED FROM THE OTHER

After a Bill Has Been Passed by the Senate or Assembly

21. When a bill has been passed by either house it shall be transmitted promptly to the other unless a motion to reconsider or a notice of motion to reconsider has been made or it is held pursuant to some rule or order of the house.

The procedure of referring bills to committees shall be determined by the respective houses.

Messages to Be in Writing Under Proper Signatures

22. Notice of the action of either house to the other shall be in writing and under the signature of the Secretary of the Senate or the Chief Clerk of the Assembly from which such message is to be conveyed. A receipt shall be taken from the officer to whom such message is delivered.

Uncontested Bills

22.1. Each standing committee may report an uncontested bill out of committee with the recommendation that it be placed on the consent calendar. The Secretary of the Senate and the Chief Clerk of the Assembly shall provide to each committee chairman or chairwoman appropriate forms for such report. As used in this rule, "uncontested bill" means a bill, except a revenue measure or a measure as to which the 30-day limitation prescribed by subdivision (a) of Section 8 of Article IV of the California Constitution has been dispensed with, which: (a) receives a do-pass or do-pass-as-amended recommendation from the committee to which it is referred, by unanimous vote of the members present provided a quorum is present; and (b) has no opposition expressed by any person present at the committee meeting with respect to the final version of the bill as approved by the committee; and (c) prior to final action by the committee, has been requested by the author to be placed on the consent calendar.

Consent Calendar

22.2. Following their second reading and the adoption of any committee amendments thereto, all bills certified by the committee chairman or chairwoman as uncontested bills shall be placed by the Secretary of the Senate or the Chief Clerk of the Assembly on the consent calendar, and shall be known as "consent calendar bills." Any consent calendar bill which is amended from the floor shall cease to be a consent calendar bill and shall be replaced on the third reading file. Upon objection of any member to the placement or retention of any bill on the consent calendar, such bill shall cease to be a consent calendar bill and shall be replaced on the third reading file. No consent calendar bill shall be considered for adoption until the second legislative day following the day of its placement on the consent calendar.

Consideration of Bills on Consent Calendar

22.3. Bills on the consent calendar are not debatable, except that the President of the Senate or the Speaker of the Assembly shall allow a reasonable time for questions from the floor and shall permit the

proponents of such bills to answer such questions. Immediately prior to voting on the first bill on the consent calendar, the President of the Senate or the Speaker of the Assembly shall call to the attention of the members the fact that the next roll call will be the roll call on the first bill on the consent calendar.

The consent calendar shall be considered as the last order of business on the daily file.

PASSAGE AND ENROLLING OF BILLS

Procedure on Defeat of More Than Majority Bill

23.5. Whenever a bill containing a section or sections requiring for passage an affirmative recorded vote of more than 21 votes in the Senate and more than 41 votes in the Assembly is being considered for passage and the urgency clause, if the bill is an urgency bill, or the bill, in any case, fails to receive the necessary votes to make all sections effective, no further action may be taken on the bill; provided that an amendment to remove all sections requiring the higher vote for passage from the bill shall be in order prior to consideration of further business. If the amendment is adopted, the bill shall be reprinted to reflect such amendment. When the bill is reprinted, it shall be returned to the same place on the file as when it failed to receive the necessary votes.

Enrollment of Bill After Passage

24. After a bill has passed both houses it shall be printed in enrolled form, omitting symbols indicating amendments, and shall be compared by the Engrossing and Enrolling Clerk and the proper committee of the house where it originated to determine that it is in the form approved by the houses. The enrolled bill shall thereupon be signed by the Secretary of the Senate and Chief Clerk of the Assembly and, except as otherwise provided by these rules, presented without delay to the Governor. The committee shall report the time of presentation of the bill to the Governor to the house and the record shall be entered in the journal. After enrollment and signature by the officers of the Legislature, constitutional amendments, and concurrent and joint resolutions shall be filed without delay in the office of the Secretary of State and the time of filing shall be reported to the house and the record entered in the journal.

AMENDMENTS AND CONFERENCES

Amendments to Amended Bills Must Be Attached

25. Whenever a bill or resolution which shall have been passed in one house shall be amended in the other, it shall immediately be reprinted as amended by the house making such amendment or amendments. One copy of such amendment or amendments shall be attached to the bill or resolution so amended, and endorsed "adopted" and such amendment or amendments, if concurred in by the house in which such bill or resolution originated, shall be endorsed "concurred in," and such endorsement shall be signed by the Secretary or Assistant Secretary of the Senate, or the Chief Clerk or Assistant Clerk of the Assembly, as the case may be; provided, however, that an amendment to the title of a bill adopted after the passage of such bill shall not necessitate reprinting, but such amendment must be concurred in by the house in which such bill originated.

Amendments to Concurrent and Joint Resolutions

25.5. When a concurrent or joint resolution is amended, and the only effect of the amendments is to add coauthors, the joint or concurrent resolution shall not be reprinted unless specifically requested by one of the added coauthors, but a list of the coauthors shall appear in the journal and history.

To Concur or Refuse to Concur in Amendments

26. In case the Senate amends and passes an Assembly bill, or the Assembly amends and passes a Senate bill, the Senate (if it be a Senate bill) or the Assembly (if it be an Assembly bill) must either "concur" or "refuse to concur" in the amendments. If the Senate concurs (if it be a Senate bill), or the Assembly concurs (if it be an Assembly bill), the Secretary or Chief Clerk shall notify the house making the amendments and the bill shall be ordered to enrollment.

Reference to Committee

26.5. Pursuant to Rule 26, whenever a bill is returned to its house of origin for a vote on concurrence in an amendment made in the other house, the Legislative Counsel shall promptly prepare and transmit to the Chief Clerk of the Assembly and the Speaker of the Assembly in the case of an Assembly bill, or to the Secretary of the Senate and Chairman of the Senate Committee on Rules in the case of a Senate bill, a brief digest summarizing the effect of the amendment made in the other house. The Secretary or Chief Clerk shall, upon receipt from the Legislative Counsel, cause the digest to

be printed in the Daily File immediately following any reference to the bill covered by the digest. A motion to concur or refuse to concur in the amendment shall not be in order until such time as the Legislative Counsel's Digest has appeared in the file or an analysis of the bill has been prepared and distributed pursuant to Senate Rule 29.8 or Assembly Rule 77.

If the digest discloses that the amendment of the other house has made a substantial substantive change in the bill as first passed by the house of origin, the bill shall on motion of the Chairman of the Senate Committee on Rules, if it be a Senate bill, be referred to the Senate Committee on Rules for reference to an appropriate standing committee. If the bill is an Assembly bill it shall be referred by the Speaker to the appropriate committee.

Upon receipt of such a bill, the committee may vote to recommend concurrence or nonconcurrence in the amendment or the committee may hold the bill. The committee shall be subject to all the requirements for procedure provided under Rule 62 for committees other than for committees of first referral, and such other requirements for normal committee procedure as the Assembly or Senate may separately provide in the standing rules of their respective houses.

Any of the provisions of this rule may be dispensed with regard to a particular bill in its house of origin upon an affirmative vote of a majority of the members of that house.

Concurring in Amendments Adding Urgency Section

27. When a bill which has been passed in one house is amended in the other by the addition of a section providing that the act shall take effect immediately as an urgency statute and is returned to the house in which it originated for concurrence in the amendment or amendments thereto, the procedure and vote thereon shall be as follows:

The presiding officer shall first direct that the urgency section be read and put to a vote. If two-thirds of the membership of the house vote in the affirmative, the presiding officer shall then direct that the question of whether the house shall concur in the amendment or amendments shall be put to a vote. If two-thirds of the membership of the house vote in the affirmative, concurrence in the amendments shall be effective.

If the affirmative vote on either of such questions is less than two-thirds of the membership of the house, the effect is a refusal to concur in the amendment or amendments, and the procedure thereupon shall be as provided in Rule 28.

When Senate or Assembly Refuse to Concur

28. If the Senate (if it be a Senate bill) or the Assembly (if it be an Assembly bill) refuses to concur in amendments to the bill made by the other house, and when the other house has been notified of such refusal to concur, a conference committee shall be appointed for each house in the manner prescribed by these rules. The Committee on Rules in the case of the Senate and the Speaker of the Assembly in the case of the Assembly shall each appoint a committee of three on conference, and the Secretary of the Senate or the Chief Clerk of the Assembly shall immediately notify the other house of the action taken.

Committee on Conference

28.1. (a) The Senate Committee on Rules and the Speaker of the Assembly, in appointing a committee on conference, shall each select two members from those voting with the majority on the point about which the difference has arisen, and the other member from the minority, in the event there is a minority vote.

Whether a member has voted with the majority or minority on the point about which the difference has arisen is determined by his or her vote on the appropriate roll call, as follows:

(1) In the Assembly—

(A) The roll call on the question of final passage of a Senate bill amended in the Assembly when the Senate has refused to concur with the Assembly amendments.

(B) The roll call on the question of concurrence with Senate amendments to an Assembly bill.

(2) In the Senate—

(A) The roll call on the question of final passage of an Assembly bill amended in the Senate when the Assembly has refused to concur with the Senate amendments.

(B) The roll call on the question of concurrence with Assembly amendments to a Senate bill.

(b) Either house may suspend this rule by a two-thirds vote of the membership of the house.

Meetings and Reports of Committees on Conference

29. The first Senator named on the conference committee shall act as chairman or chairwoman of the committee from the Senate, and the first Member of the Assembly named on such committee shall act as chairman or chairwoman of the committee from the Assembly. The chairman or chairwoman of the committee on conference for the house of origin of the bill shall arrange the time and place of meeting of the conference committee and shall prepare or direct the preparation of reports. It shall require an affirmative vote of not less

than two of the Assembly Members and two of the Senate Members constituting the committee on conference to agree upon a report, and the report shall be submitted to both the Senate and the Assembly. The committee on conference shall report to both the Senate and the Assembly. Such report is not subject to amendment, and if either house refuses to adopt such report, the conferees shall be discharged and other conferees appointed; provided, however, that no more than three different conference committees shall be appointed on any one bill. No member who has served on a committee on conference shall be appointed a member of another committee on conference on the same bill. It shall require the same affirmative recorded vote to adopt any conference report as required by the California Constitution upon the final passage of the bill affected by such report. It shall require an affirmative recorded vote of two-thirds of the entire elected membership of each house to adopt any conference report affecting any bill which contains an item or items of appropriation which are subject to subdivision (d) of Section 12 of Article IV of the California Constitution. The report of a conference committee shall be in writing, and shall have affixed thereto the signatures of each Senator and each Member of the Assembly consenting to the report. Space shall also be provided where a member of a conference committee may indicate his or her dissent in the committee's findings. Any dissenting member may have attached to a conference committee report a dissenting report which shall not exceed, in length, the majority committee report. A copy of any amendments proposed in the majority report shall be placed on the desk of each member of the house before it is acted upon by the house.

The vote on concurrence or upon the adoption of such conference report shall be deemed the vote upon final passage of such bill.

Conference Committees

29.5. (a) All meetings of any conference committee on the Budget Bill shall be open and readily accessible to the public.

No conference committee on any bill may meet, consider, or act on the subject matter of the bill except in a meeting that is open and readily accessible to the public; unless the action is on a report determined by the Legislative Counsel to be nonsubstantive. The Legislative Counsel shall examine each proposed report and shall note upon the face of the report that the amendments proposed are "substantive" or "nonsubstantive" as the case may be.

The chairman or chairwoman of the conference committee of each house shall give notice to the file clerk of their respective houses of the time and place of such meeting. Notice of each public meeting shall be published in the file of each house one calendar day prior to the meeting, except that such notice shall not be required for a meeting of a conference committee on the Budget Bill. When the

provisions of this subdivision are waived with respect to a meeting of any public conference committee, and when there is a meeting of a conference committee on the Budget Bill, every effort shall be made to inform the public that such a meeting has been called. When the provisions of this subdivision have been waived with respect to the meeting of any public conference committee, the chairman or chairwoman of the conference committee of each house shall immediately notify the chairman or chairwoman of the policy committee of their respective houses that considered the bill in question of the waiver, and of the time and place of the meeting.

(b) The first committee on conference of the Budget Bill, if such a committee is appointed, shall submit its report to each house no later than 15 days after the Budget Bill has been passed by both houses. If such report is not submitted by such date, the conference committee shall be deemed to have reached no agreement and shall so inform each house pursuant to Rule 30.7.

(c) A committee on conference of the Budget Bill shall only consider differences between the Assembly version of the Budget Bill as passed by the Assembly and the Senate version of the Budget Bill as passed by the Senate and shall not approve any item of expenditure nor control which exceeds that contained in one of the two versions before the conference committee.

(d) No conference committee on any bill, other than the Budget Bill, shall approve any substantial financial provision in any bill if such financial provision has not been heard by the fiscal committee of each house, nor shall any such conference committee approve substantial policy changes which have not been heard by the policy committee of each house.

(e) No waiver of the one calendar day file notice requirement of subdivision (a) shall be effective for longer than three calendar days.

Conference Committee Reports

30. Upon submission of the report of a committee on conference, if the report recommends that the bill be further amended, the bill shall be reprinted incorporating the amendments recommended by the conference committee. The consideration of the report of a committee on conference shall not be in order until the bill in the form recommended by the report of the committee on conference has both been in print and been noticed in the Daily File for not less than one legislative day.

If the conference committee's report recommends only that the amendments of the Senate or the Assembly "be concurred in," consideration of the report shall be in order at any time, and reprinting of the bill shall not be required, but notice shall appear in the Daily File for not less than one legislative day.

No conference committee report shall be in order unless it has been received by the Secretary of the Senate and the Chief Clerk of

the Assembly at least three calendar days preceding the scheduled commencement of the summer, interim, or final recesses of the Legislature.

The provisions of this rule may be suspended as to any particular conference committee report by a two-thirds vote of the membership of either house.

This rule shall not apply to a report of a committee on conference on the Budget Bill.

Conference Committee Reports on Urgency Statutes

30.5. When the report of a committee on conference recommends the amendment of a bill by the addition of a section providing that the act shall take effect immediately as an urgency statute, the procedure and the vote thereon shall be as follows:

The presiding officer shall first direct that the urgency section be read and put to a vote. If two-thirds of the members elected to the house vote in the affirmative, the presiding officer shall then direct that the question of whether the house shall adopt the report of the committee on conference shall be put to a vote. If two-thirds of the members elected to the house vote in the affirmative, the adoption of the report and the amendments proposed thereby shall be effective.

If the affirmative vote on either of such questions is less than two-thirds of the members elected to such house, the effect is a refusal to adopt the report of the committee on conference.

Failure to Agree on Report

30.7. A conference committee may find and determine that it is unable to submit a report to the respective houses, upon the affirmative vote to that effect of not less than two of the Assembly Members and not less than two of the Senate Members constituting the committee. Such finding may be submitted to the Chief Clerk of the Assembly and the Secretary of the Senate in the form of a letter from the chairman or chairwoman of the committee on conference for the house of origin of the bill, containing the signatures of the members of the committee consenting to the finding and determination that the committee is unable to submit a report. The Chief Clerk of the Assembly and the Secretary of the Senate, upon being notified that a conference committee is unable to submit a report, shall so inform each house, whereupon the conferees shall be discharged and other conferees appointed, in accordance with the provisions of Rule 29.

MISCELLANEOUS PROVISIONS

Authority When Rules Do Not Govern

31. All relations between the houses which are not covered by these rules shall be governed by Mason's Manual.

Press Rules

32. (a) Persons desiring privileges of accredited press representatives shall make application to the Joint Rules Committee. Such application shall constitute compliance with any provisions of the rules of the Assembly or the Senate with respect to registration of news correspondents. Applications shall state in writing the names of the daily newspapers, periodic publications, news associations, or radio or television stations by which the press representatives are employed, and what other occupations or employment they may have, if any, and the press representatives shall further declare that they are not employed, directly or indirectly, to assist in the prosecution of the legislative business of any person, corporation, or association, and will not become so employed while retaining the privilege of accredited press representatives.

(b) The applications required by subdivision (a) of this rule shall be authenticated in a manner that shall be satisfactory to the Standing Committee of the Capitol Correspondents Association which shall see that occupation of seats and desks in the Senate and the Assembly Chambers is confined to bona fide correspondents of reputable standing in their business, who represent daily newspapers requiring a daily file of legislative news, qualified periodic publications, or news associations requiring daily telegraphic or radio or television service on legislative news. It shall be the duty of the standing committee, at its discretion, to report violation of accredited press privileges to the Speaker of the Assembly, or to the Senate Committee on Rules, and pending action thereon the offending correspondent may be suspended by the standing committee.

(c) Except as otherwise provided in this subdivision, persons engaged in other occupations whose chief attention is not given to newspaper correspondence or to news associations requiring telegraphic or radio or television service shall not be entitled to the privileges accorded accredited press representatives; and the press list in the Handbook of the California Legislature and the Senate and Assembly Histories shall be a list only of persons authenticated by the standing committee of correspondents. Accreditation may be granted to bona fide correspondents of reputable standing employed by periodic publications of general circulation, providing that the applicants are employed on a full-time basis in the capitol area preparing articles dealing with state government and politics and

that their publications are not organs or organizations involved in legislative advocacy.

(d) The press seats and desks in the Senate and Assembly Chambers shall be under the control of the standing committee of correspondents, subject to the approval and supervision of the Speaker of the Assembly and the Senate Committee on Rules. Press cards shall be issued by the President of the Senate and the Speaker of the Assembly only to correspondents properly accredited in accordance with the provisions of this rule.

(e) One or more rooms shall be assigned for the exclusive use of correspondents during the legislative session, which rooms shall be known as the Press Room. The Press Room shall be under the control of the Chief of the Office of Buildings and Grounds; provided, that all rules and regulations shall be approved by the Senate Committee on Rules and the Speaker of the Assembly.

(f) No accredited member of the Capitol Correspondents Association shall, for compensation, perform any service for state constitutional officers or members of their staffs, for state agencies, for the Legislature, for candidates for state office, or for a state officeholder, or for any person registered or performing as a legislative advocate.

(g) An accredited member of the association who violates subdivision (a) or (f) of this rule shall be subject to the following penalties:

(1) For the first offense, the Standing Committee of the Capitol Correspondents Association shall send a letter of admonition to the offending member, his or her employer, and the Joint Rules Committee. The letter shall state the nature of the member's rule violation and shall warn of an additional penalty for a second offense.

(2) For a second offense, the Standing Committee of the Capitol Correspondents Association shall recommend to the Joint Rules Committee that the member's accreditation be suspended or revoked and that he or she lose all rights and privileges attached thereto. The Standing Committee of the Capitol Correspondents Association shall also dismiss the member from the association.

Any member of the Standing Committee of the Capitol Correspondents Association may propose that the committee make an inquiry to determine if an association member has violated subdivision (a) or (f) of this rule. Upon a majority vote of the Standing Committee of the Capitol Correspondents Association, an inquiry shall be made.

Upon receipt of a signed, written notice from any association member of his or her belief that another association member may have violated subdivision (a) or (f) of this rule, the Standing Committee of the Capitol Correspondents Association shall commence an inquiry into the possible violation.

If the Standing Committee of the Capitol Correspondents Association determines by majority vote that an association member

has broken an association rule, it shall inform the member of its finding. Within two weeks of notification, the member may request a meeting of the membership. If the member makes such a request, the Standing Committee of the Capitol Correspondents Association shall promptly schedule a meeting at the earliest possible time. After hearing the member and the committee review the circumstances of the alleged violation, the membership may, by majority vote, nullify the finding of the Standing Committee of the Capitol Correspondents Association. If nullification does not occur, the Standing Committee of the Capitol Correspondents Association shall impose immediately the appropriate penalty.

Dispensing With Joint Rules

33. No joint rule shall be dispensed with except by a vote of two-thirds of each house, except as otherwise provided in these rules. If either house shall violate a joint rule, a question of order may be raised in the other house and decided in the same manner as in the case of the violation of the rules of such house; and if it shall be decided that the joint rules have been violated, the bill involving such violations shall be returned to the house in which it originated, and such disputed matter be considered in like manner as in conference committee.

Dispensing with Joint Rules: Unanimous Consent

33.1. Notwithstanding any other rule to the contrary, a joint rule that may be dispensed with by one house may be done so by unanimous consent if the rules committee of that house has approved.

Opinions of Legislative Counsel

34. Whenever the Legislative Counsel issues an opinion to any person other than the first-named author analyzing the constitutionality, operation, or effect of a bill or other legislative measure which is then pending before the Legislature or of any amendment made or proposed to be made to such bill or measure, he or she is authorized and instructed to deliver two copies of the opinion to the first-named author as promptly as feasible after the delivery of the original opinion and also to deliver a copy to any other author of the bill or measure who so requests. A copy of any letter prepared by the Legislative Counsel for the sole purpose of advising a member of a conflict between two or more bills as to the sections of law being amended, repealed, or added shall be submitted to the chairman or chairwoman of the committee to which each such bill has been referred.

Resolutions Prepared by Legislative Counsel

34.1. Whenever the Legislative Counsel has been requested to draft a resolution commemorating or taking note of any event, or a resolution congratulating or expressing sympathy toward any person, and subsequently receives a similar request from another Member of the Legislature, he or she shall inform that requester and each subsequent requester that such a resolution is being, or has been, prepared, and he or she shall inform them of the name of the member for whom the resolution was, or is being, prepared.

Resolutions

34.2. A concurrent resolution, Senate resolution, or House resolution may be introduced to memorialize the death of a present or former state or federal elected official or a member of their immediate families. In all other instances, a resolution other than a concurrent resolution, as specified by the Committee on Rules of each house, or as provided by the Joint Rules Committee in those cases which require that such resolution should emanate from both houses, shall be used for the purpose of commendation, congratulation, sympathy, or regret with respect to any person, group, or organization.

No concurrent resolution requesting the Governor to issue a proclamation shall be introduced without the prior approval of the Committee on Rules of the house in which the resolution is to be introduced.

Identical Drafting Requests

34.5. Whenever it shall come to the attention of the Legislative Counsel that a member has requested the drafting of a bill which will be substantially identical to one already introduced, he or she shall inform such member of that fact.

Expense of Members

35. As provided in Section 8902 of the Government Code, each Member of the Legislature is entitled to reimbursement for living expenses while required to be in Sacramento to attend a session of the Legislature, or while traveling to and from or in attendance at a committee meeting, or while attending to any legislative function or responsibility as authorized or directed by legislative rules or the Committee on Rules of the house of which he or she is a member at the same rate as may be established by the State Board of Control for other elected state officers. Each member shall be reimbursed for travel expenses incurred in traveling to and from a session of the Legislature, or when traveling to and from a meeting of a committee

of which he or she is a member, or when traveling pursuant to any other legislative function or responsibility as authorized or directed by legislative rules or the Committee on Rules of the house of which he or she is a member at the rate prescribed by Section 8903 of the Government Code.

Expense allowances for Members of the Senate and Assembly shall be approved and certified to the Controller by the Secretary of the Senate, on behalf of the Senate, and the Chief Clerk of the Assembly or other person authorized by the Assembly Committee on Rules, on behalf of the Assembly, weekly or as otherwise directed by either house, and upon such certification the Controller shall draw his or her warrants in payment of the allowances to the respective members.

Investigating Committees

36. In order to expedite the work of the Legislature either house, or both houses jointly, may by resolution or statute provide for the appointment of committees to ascertain facts and to make recommendations as to any subject within the scope of legislative regulation or control.

The resolution providing for the appointment of a committee shall state the purpose of the committee, and the scope of the subject concerning which it is to act and may authorize it to act either during sessions of the Legislature or, when such authorization may lawfully be made, after final adjournment.

In the exercise of the power granted by this rule, each committee may employ such clerical, legal, and technical assistants as may be authorized by: (a) the Joint Committee on Rules in the case of a joint committee, (b) the Senate Committee on Rules in the case of a Senate committee, or (c) the Assembly Committee on Rules in the case of an Assembly committee.

Except as otherwise provided herein for joint committees or by the rules of the Senate or the Assembly for single house committees, each committee may adopt and amend such rules governing its procedure as may appear necessary and proper to carry out the powers granted and duties imposed under this rule. Such rules may include provisions fixing the quorum of the committee and the number of votes necessary to take action on any matter. With respect to all joint committees, a majority of the membership from each house constitutes a quorum and an affirmative vote of a majority of the membership from each house is necessary for the committee to take action.

Each such committee is authorized and empowered to summon and subpoena witnesses, require the production of papers, books, accounts, reports, documents, records, and papers of every kind and description, to issue subpoenas, and to take all necessary means to compel the attendance of witnesses and to procure testimony, oral and documentary.

Each member of such committees is authorized and empowered to administer oaths, and all of the provisions of Chapter 4 (commencing with Section 9400), Part 1, Division 2, Title 2 of the Government Code, relating to the attendance and examination of witnesses before the Legislature and the committees thereof, shall apply to such committees.

The Sergeant at Arms of the Senate or Assembly, or such other person as may be designated by the chairman or chairwoman of the committee, shall serve any and all subpoenas, orders, and other process that may be issued by the committee, when directed to do so by the chairman or chairwoman, or by a majority of the membership of the committee.

Every department, commission, board, agency, officer, and employee of the state government, including the Legislative Counsel and the Attorney General and their subordinates, and of every political subdivision, county, city, or public district of or in this state, shall give and furnish to these committees and to their subcommittees upon request such information, records, and documents as the committees deem necessary or proper for the achievement of the purposes for which each such committee was created.

Each committee or subcommittee of either house in accordance with the rules of that respective house and each joint committee or subcommittee thereof, may meet at any time during the period in which it is authorized to act, either at the State Capitol, or at any other place in the State of California, in public or executive session, and do any and all things necessary or convenient to enable it to exercise the powers and perform the duties herein granted to it or accomplish the objects and purposes of the resolution creating it with the following exceptions:

(a) When the Legislature is in session:

(1) No committee or subcommittee of either house shall meet outside the State Capitol without the prior approval of the Senate Committee on Rules with respect to Senate committees and subcommittees and the Speaker of the Assembly with respect to Assembly committees and subcommittees.

(2) No committee or subcommittee of either house, other than a standing committee or subcommittee thereof, shall meet unless notice of such meeting has been printed in the daily file for four days prior thereto. This requirement may be waived by a majority vote of either house with respect to a particular bill.

(3) No joint committee or subcommittee thereof, other than the Joint Committees on Legislative Audit, Legislative Budget, and Rules, shall meet outside the State Capitol without the prior approval of the Joint Rules Committee.

(4) No joint committee or subcommittee thereof, other than the Joint Committees on Legislative Audit, Legislative Budget, and

Rules, shall meet unless notice of such meeting has been printed in the daily file for four days prior thereto.

(b) When the Legislature is in joint recess each joint committee or subcommittee, other than the Joint Committees on Legislative Audit, Legislative Budget, and Rules, shall notify the Joint Rules Committee at least two weeks prior to any such meeting.

(c) The requirements placed upon joint committees by subdivisions (a) and (b) of this rule may be waived where it is deemed necessary by the Joint Rules Committee.

Each such committee may expend such money as may be made available to it for such purpose but no committee shall incur any indebtedness unless money shall have been first made available therefor.

No living expenses shall be allowed in connection with legislative business for a day on which the member receives reimbursement for expenses while required to be in Sacramento to attend a session of the Legislature. The chairman or chairwoman of each committee shall audit and approve the expense claims of the members of the committee, including claims for mileage in connection with attendance on committee business, or in connection with specific assignments by the committee chairman or chairwoman, but excluding other types of mileage, and shall certify the amount approved to the Controller, and the Controller shall draw his or her warrants upon the certification of the chairman or chairwoman.

Subject to the rules of each house for the respective committees of each house, and subject to the joint rules for any joint committee, the chairman or chairwoman of any such committee may appoint subcommittees and chairmen or chairwomen thereof for the purpose of more expeditiously handling and considering matters referred to it, and such subcommittees and the chairmen or chairwomen thereof shall have all the powers and authority herein conferred upon the committee and its chairman or chairwoman. The chairman or chairwoman of such subcommittee shall audit the expense claims of the members of such subcommittees and other claims and the expenses incurred by it and shall certify the amount thereof to the chairman or chairwoman of the committee who shall, if he or she approves the same, certify the amount thereof to the Controller, and the Controller shall draw his or her warrant therefor upon such certification, and the Treasurer shall pay the same. Whenever such committee or any subcommittee thereof is authorized to leave the State of California in the performance of its duties, then such committee or subcommittee shall, while out of the state, have the same authority as if it were acting and functioning within the state, and the members thereof shall be reimbursed for expenses.

Notwithstanding any provision of this rule, if the standing rules of either house require that expense claims of committees for goods or services or pursuant to contracts or for expenses of employees or members of committees be audited or approved, after approval of

the committee chairman or chairwoman, by another agency of either house, the Controller shall draw his warrants only upon the certification of such other agency. All expense claims approved by the chairman or chairwoman of any joint committee, other than the Joint Legislative Budget Committee and the Joint Legislative Audit Committee, shall be approved by the Joint Rules Committee and the Controller shall draw his or her warrants only upon the certification of the Joint Rules Committee.

Except salary claims of employees clearly subject to federal withholding taxes and the requirement as to loyalty oaths, claims presented for services or pursuant to contract shall refer to the agreement, the terms of which shall be made available to the Controller.

Expenses of Committee Employees

36.1. Unless otherwise provided by respective house or committee rule or resolution, employees of legislative committees shall, when entitled to traveling expenses, be entitled to allowances in lieu of actual expenses for hotel accommodations, breakfast, lunch, and dinner, at the rates fixed by the State Board of Control from time to time in limitation of reimbursement of expenses of state employees generally; provided, that if an allowance for hotel accommodations, breakfast, lunch, and dinner is made by a committee at a rate in excess of those fixed by the State Board of Control the chairman or chairwoman of the committee shall notify the Controller of that fact in writing.

Appointment of Committees

36.5. The provisions of this rule shall apply whenever a joint committee is created by a statute or resolution which either provides that appointments be made and vacancies be filled in the manner provided for in the Joint Rules, or which makes no provision for the appointment of members or the filling of vacancies.

The Senate members of the committee shall be appointed by the Senate Committee on Rules; the Assembly members of the committee shall be appointed by the Speaker of the Assembly; and vacancies occurring in the membership of the committee shall be filled by the respective appointing powers. The members appointed shall hold over until their successors are regularly selected.

Appointment of Joint Committee Chairmen or Chairwomen

36.7. The chairman or chairwoman of each joint committee heretofore or hereafter created, except the Joint Legislative Budget Committee and the Joint Legislative Audit Committee, shall be appointed by the Joint Rules Committee from a member or members

recommended by the Senate Committee on Rules and the Speaker of the Assembly.

Joint Committee Funds

36.8. Each joint committee, heretofore or hereafter created, except the Joint Legislative Budget Committee and the Joint Legislative Audit Committee, shall expend the funds heretofore or hereafter made available to it in compliance with the policies set forth by the Joint Rules Committee with respect to personnel, salaries, purchasing, office space assignment, contractual services, rental or lease agreements, travel, and any and all other matters relating to the management and administration of committee affairs.

Joint Legislative Budget Committee

37. In addition to any other committee provided for by these rules, there shall be a joint committee to be known and called the Joint Legislative Budget Committee, which is hereby declared to be a continuing body.

It shall be the duty of the committee to ascertain facts and make recommendations to the Legislature and to the houses thereof concerning the state Budget, the revenues and expenditures of the state, and the organization and functions of the state, its departments, subdivisions and agencies, with a view of reducing the cost of the state government and securing greater efficiency and economy.

The committee shall consist of eight Members of the Senate and eight Members of the Assembly. The Senate members of the committee shall consist of eight Members of the Senate appointed by the Senate Committee on Rules. The Assembly members of the committee shall consist of eight Members of the Assembly appointed by the Speaker of the Assembly. The committee shall select its own chairman or chairwoman.

Any vacancies occurring between regular sessions in the Senate membership of the Joint Legislative Budget Committee shall be filled by the Senate Committee on Rules, and the Senators appointed shall hold over until their successors are regularly selected. For the purposes of this rule, a vacancy shall be deemed to exist as to a Senator whose term is expiring whenever he or she is not reelected at the general election.

Any vacancies occurring between regular sessions in the Assembly membership of the Joint Legislative Budget Committee shall be filled by the Speaker of the Assembly, and the Members of the Assembly appointed shall hold over until their successors are regularly selected. For the purposes of this rule, a vacancy shall be deemed to exist as to a Member of the Assembly whose term is expiring whenever he or she is not reelected at the general election.

Any vacancy occurring at any time in the Assembly membership of the committee shall be filled by appointment by the Speaker. The committee shall have the authority to make rules to govern its own proceedings and its employees. It may also create subcommittees from its membership, assigning to its subcommittees any study, inquiry, investigation, or hearing that the committee itself has authority to undertake or hold and the subcommittee for the purpose of this assignment shall have and may exercise all the powers conferred upon the committee, limited only by the express terms of any rule or resolution of the committee defining the powers and duties of the subcommittee. Those powers may be withdrawn or terminated at any time by the committee.

The Joint Legislative Budget Committee may render services to any investigating committee of the Legislature pursuant to contract between the Joint Legislative Budget Committee and the committee for which the services are to be performed. The contract may provide for payment to the Joint Legislative Budget Committee of the cost of the services from the funds appropriated to the contracting investigating committee. All legislative investigating committees are authorized to enter into those contracts with the Joint Legislative Budget Committee. Money received by the Joint Legislative Budget Committee pursuant to any such agreement shall be in augmentation of the current appropriation for the support of the Joint Legislative Budget Committee.

The provisions of Rule 36 shall apply to the Joint Legislative Budget Committee, and it shall have all the authority provided in such rule or pursuant to Section 11 of Article IV of the Constitution.

The committee shall have authority to appoint a Legislative Analyst, to fix his or her compensation and to prescribe his or her duties, and to appoint any other clerical and technical employees as may appear necessary. The duties of the Legislative Analyst shall be as follows:

(1) To ascertain the facts and make recommendations to the Joint Legislative Budget Committee and under its direction to the committees of the Legislature concerning:

(a) The state Budget.

(b) The revenues and expenditures of the state.

(c) The organization and functions of the state, its departments, subdivisions, and agencies.

(2) To assist the Senate Budget and Fiscal Review Committee and the Assembly Committees on Appropriations and Budget in consideration of the Budget and all bills carrying express or implied appropriations and all legislation affecting state departments and their efficiency; to appear before any other legislative committee; and to assist any other legislative committee upon instruction by the Joint Legislative Budget Committee.

(3) To provide all legislative committees and Members of the Legislature with information obtained under the direction of the Joint Legislative Budget Committee.

(4) To maintain a record of all work performed by the Legislative Analyst under the direction of the Joint Legislative Budget Committee and to keep and make available all documents, data, and reports submitted to him or her by any Senate, Assembly, or joint committee. The committee may meet either during sessions of the Legislature, any recess thereof, or after final adjournment, and may meet or conduct business at any place within the State of California.

The chairman or chairwoman of the committee or, in the event of that person's inability to act, the vice chairman or vice chairwoman, shall audit and approve the expenses of members of the committee or salaries of the employees, and all other expenses incurred in connection with the performance of its duties by the committee, and the chairman or chairwoman shall certify the amount approved to the Controller, and the Controller shall draw his or her warrants upon the certification of the chairman or chairwoman, and the Treasurer shall pay the same to the chairman or chairwoman of the committee to be disbursed by the chairman or chairwoman.

On and after the commencement of a succeeding regular session those members of the committee who continue to be Members of the Senate and Assembly, respectively, continue as members of the committee until their successors are appointed, and the committee continues with all its powers, duties, authority, records, papers, personnel, and staff, and all funds theretofore made available for its use.

Upon the conclusion of its work, any Assembly, Senate, or joint committee (other than a standing committee) shall deliver to the Legislative Analyst for use and custody all documents, data, reports, and other materials that have come into the possession of the committee and that are not included within the final report of the committee to the Assembly, Senate, or the Legislature, as the case may be. The documents, data, reports, and other materials shall be available to Members of the Legislature, the Senate Office of Research, and the Assembly Office of Research, upon request.

The Legislative Analyst with the consent of the committee shall make available to any Member or committee of the Legislature any other reports, records, documents, or other data under his or her control, except that reports prepared by the Legislative Analyst in response to a request from a Member or committee of the Legislature shall only be made available with the written permission of the member or committee who made the request.

The Legislative Analyst, upon the receipt of a request from any committee or Member of the Legislature to conduct a study or provide information that falls within the scope of his or her responsibilities and that concerns the administration of the government of the State of California, shall at once advise the Joint

Legislative Budget Committee of the nature of the request without disclosing the name of the Member or committee making the request.

The Legislative Analyst shall immediately undertake to provide the requesting committee or legislator with the service or information requested, and shall inform the committee or legislator of the approximate date when this information will be available. Should there be any material delay, he or she shall subsequently communicate this fact to the requester.

Neither the Committee on Rules of either house nor the Joint Rules Committee shall assign any matter for study to the Joint Legislative Budget Committee or the Legislative Analyst without first obtaining from the Joint Legislative Budget Committee an estimate of the amount required to be expended by it to make the study.

Any concurrent, joint, Senate, or House resolution assigning a study to the Joint Legislative Budget Committee or to the Legislative Analyst shall be referred to the respective rules committees. Before the committees shall act upon or assign the resolution, they shall obtain an estimate from the Joint Legislative Budget Committee of the amount required to be expended to make the study.

Citizen Cost Impact Report

37.1. Any Member or committee of the Legislature may recommend that the Legislative Analyst prepare a citizen cost impact analysis on proposed legislation. However, such a recommendation shall first be reviewed by the Committee on Rules of the house where the recommendation originated, and this committee shall make the final determination as to which bills shall be assigned for preparation of an impact analysis.

In selecting specific bills for assignment to the Legislative Analyst for preparation of citizen cost impact analyses, the Committee on Rules shall request the Legislative Analyst to present an estimate of his or her time and prospective costs for preparing the analyses. Only those bills which have a potential significant cost impact shall be assigned. Where necessary, the Committee on Rules shall provide funds to offset added costs incurred by the Legislative Analyst.

The citizen cost impact analyses shall include those economic effects which the Legislative Analyst deems significant and which he or she believes will result directly from the proposed legislation. Insofar as feasible, the Legislative Analyst shall consider, but not be limited to consideration of, the following:

(a) The economic effect on the public generally.

(b) Any specific economic effect on persons or businesses in the case of legislation which is regulatory.

The Legislative Analyst shall submit the citizen cost impact analyses when completed to the committee or committees and at the time or times designated by the Committee on Rules.

The Legislative Analyst shall submit from time to time, but at least once a year, a report to the Legislature on the trends and directions of the state's economy, and shall list the alternatives and make recommendations as to legislative actions which, in his or her judgment, will insure a sound and stable state economy.

Joint Legislative Audit Committee

37.3. The Joint Legislative Audit Committee is created pursuant to the Legislature's rulemaking authority and specific constitutional authority by Chapter 4 (commencing with Section 10500), Part 2, Division 2, Title 2 of the Government Code. The committee shall consist of seven Members of the Senate and seven Members of the Assembly who shall be selected in the manner provided for in these rules, of which one shall be the chairman or chairwoman of the fiscal committee for the Senate and one shall be the chairman or chairwoman of the fiscal committee for the Assembly. Notwithstanding anything to the contrary in these rules, four members from each house constitute a quorum and the number of votes necessary to take action on any matter. The Chairman or Chairwoman of the Joint Legislative Audit Committee, upon receiving a request by any Member of the Legislature or committee thereof for a copy of a report prepared or being prepared by the Bureau of State Audits, shall provide the member or committee with a copy of such report when it is, or has been, submitted by the Bureau of State Audits to the Joint Legislative Audit Committee.

Study or Audits

37.4. (a) Notwithstanding any other provision of law to the contrary, the Joint Legislative Audit Committee shall establish priorities and assign all work to be done by the Bureau of State Audits.

(b) Any bill requiring action by the Bureau of State Audits shall contain an appropriation for the cost of any study or audit.

(c) Any bill or concurrent, joint, Senate, or House resolution assigning a study to the Joint Legislative Audit Committee or to the Bureau of State Audits shall be referred to the respective rules committees. Before the committees shall act upon or assign the bill or resolution, they shall obtain an estimate from the Joint Legislative Audit Committee of the amount required to be expended to make the study.

Waiver

37.5. The provisions of subdivision (b) of Rule 37.4 may be waived by the Joint Legislative Audit Committee. The chairman or chairwoman of the committee shall notify the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel

in writing when the provisions of subdivision (b) of Rule 37.4 have been waived. If the cost of a study or audit is less than one hundred thousand dollars ($100,000), the chairman or chairwoman of the committee may exercise the committee's authority to waive the provisions of subdivision (b) of Rule 37.4.

Administrative Regulations

37.7. (a) Any Member of the Senate may request the Senate Committee on Rules, and any Member of the Assembly may request the Speaker of the Assembly, to direct a standing committee or the Office of Research of their respective house to study any proposed or existing regulation or group of related regulations. Upon receipt of such a request, the Senate Committee on Rules or the Speaker of the Assembly shall, after review, determine whether such a study shall be made. In reviewing the request, the Senate Committee on Rules or the Speaker of the Assembly shall determine:

(1) The cost of making such a study.

(2) The potential public benefit to be derived from such a study.

(3) The scope of the study.

(b) The study may consider, among other relevant issues, whether the proposed or existing regulation:

(1) Exceeds the agency's statutory authority.

(2) Fails to conform to the legislative intent of the enabling statute.

(3) Contradicts or duplicates other regulations adopted by federal, state, or local agencies.

(4) Involves an overdelegation of regulatory authority to a particular state agency.

(5) Unfairly burdens particular elements of the public.

(6) Imposes social or economic costs which outweigh its intended benefits to the public.

(7) Imposes unreasonable penalties for violation.

The respective reviewing unit shall in a timely manner transmit its concerns, if any, to the Senate Committee on Rules or the Speaker of the Assembly, and the promulgating agency.

In the event that a state agency takes a regulatory action which the reviewing unit finds unacceptable, the unit shall file a report for publication in the daily journal of its respective house indicating the specific reasons why the regulatory action should not have been taken. The report may include a recommendation that the Legislature adopt a concurrent resolution requesting the state agency to reconsider its action or that the Legislature enact a statute to restrict the regulatory powers of the state agency taking the action.

Joint Rules Committee

40. The Joint Rules Committee is hereby created. The committee has a continuing existence and may meet, act, and conduct its business during sessions of the Legislature or any recess thereof.

The committee shall consist of the members of the Assembly Committee on Rules, the Assembly Majority Floor Leader, the Assembly Minority Floor Leader, the Speaker of the Assembly, and four members of the Senate Committee on Rules, and as many Members of the Senate as may be required to maintain equality in the number of Assembly Members and Senators on the committee, to be appointed by the Senate Committee on Rules. Vacancies occurring in the membership shall be filled by the appointing power.

The committee and its members shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to this committee and its members.

The committee shall ascertain facts and make recommendations to the Legislature and to the houses thereof concerning:

(a) The relationship between the two houses and procedures calculated to expedite the affairs of the Legislature by improving that relationship.

(b) The legislative branch of the state government and any defects or deficiencies in the law governing that branch.

(c) Methods whereby legislation is proposed, considered, and acted upon.

(d) The operation of the Legislature, and the committees thereof, and the means of coordinating the work thereof and avoiding duplication of effort.

(e) Aids to the Legislature.

(f) Information and statistics for the use of the Legislature, and respective houses thereof, and the members.

Any matter of business of either house, the transaction of which would affect the interests of the other house, may be referred to the committee for action if the Legislature is not in recess, and shall be referred to the committee for action if the Legislature is in recess.

The committee has the following additional powers and duties:

(a) To select a chairman or chairwoman from its membership. The vice chairman or vice chairwoman of the committee shall be one of the Senate members of the committee, to be selected by the Senate Committee on Rules.

(b) To allocate space in the State Capitol Building and all annexes and additions thereto as provided by law.

(c) To approve, as provided by law, the appearance of the Legislative Counsel in litigation.

(d) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies, and reports to the committee as will best assist it to carry out the purposes for which it is created.

(e) To cooperate with and secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this rule and to direct the sheriff of any county to serve subpoenas, orders, and other process issued by the committee.

(f) To report its findings and recommendations, including recommendations for the needed revision of any and all laws and constitutional provisions relating to the Legislature, to the Legislature and to the people from time to time and at any time.

(g) The committee, and any subcommittee when so authorized by the committee, may meet and act without as well as within the State of California, and is authorized to leave the state in the performance of its duties.

(h) To expend such funds as may be made available to it to carry out the functions and activities related to the legislative affairs of the Senate and Assembly.

(i) To appoint a chief administrative officer of the committee, who shall have such duties relating to the administrative, fiscal, and business affairs of the committee as the committee shall prescribe. The committee may terminate the services of the chief administrative officer at any time.

(j) To employ such persons as may be necessary to assist all other joint committees, except the Joint Legislative Budget Committee and the Joint Legislative Audit Committee, in the exercise of their powers and performance of their duties. In accordance with Rule 36.8, the committee shall govern and administer the expenditure of funds by such other joint committees, requiring that the claims of such joint committees be approved by the Joint Rules Committee or its designee. All expenses of the committee as well as expenses of all other joint committees may be paid from the Operating Funds of the Assembly and Senate.

(k) To appoint the chairmen or chairwomen of joint committees, as authorized by Rule 36.7.

(*l*) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this rule.

The members of the Joint Rules Committee from the Senate may meet separately as a unit, and the members of the Joint Rules Committee from the Assembly may meet separately as a unit, and consider any action which is required to be taken by the Joint Rules Committee. If the majority of members of the Joint Rules Committee of each house at the separate meetings vote in favor of such action, the action shall be deemed to be action taken by the Joint Rules Committee.

The Joint Rules Committee shall meet not less than biweekly during a session of the Legislature, other than during a joint recess, at a regularly scheduled time and place. If the full committee fails to so meet, the members of the committee from the Senate shall meet separately as a unit and the members of the committee from the Assembly shall meet separately as a unit within five days of the regularly scheduled meeting date.

The committee shall succeed to, and is vested with, all of the powers and duties of the Joint Committee on Legislative Organization, State Capitol Committee, the Joint Committee on Interhouse Cooperation, the Joint Legislative Committee for School Visitations, and the Joint Standing Committee on the Joint Rules of the Senate and the Assembly.

Review of Administrative Regulations

40.1. The Joint Rules Committee, with regard to joint committees, and the respective rules committee of each house, with regard to standing and select committees of the house, shall approve any request for a priority review made by a committee pursuant to Section 11349.7 of the Government Code and shall submit approved requests to the Office of Administrative Law. The Joint Rules Committee or the respective rules committee, and the committee initiating the request, shall each receive a copy of the priority review.

Subcommittee on Legislative Space and Facilities

40.3. (a) A subcommittee of the Joint Rules Committee is hereby created to be known as the Subcommittee on Legislative Space and Facilities. The subcommittee shall consist of three Members of the Senate and three Members of the Assembly, appointed by the Chairman or Chairwoman of the Joint Rules Committee, and the chairman or chairwoman of the fiscal committee of each house who shall have full voting rights on the subcommittee. The chairman or chairwoman of the subcommittee shall be appointed by the members thereof. For purposes of this subcommittee, the chairmen or chairwomen of the fiscal committees shall be ex officio members of the Joint Rules Committee, but shall not have voting rights on that committee, nor shall they be counted in determining a quorum. The subcommittee shall consider the housing of the Legislature and legislative facilities.

(b) The subcommittee and its members shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to this subcommittee and its members.

(c) The subcommittee has the following additional powers and duties:

(1) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies, and reports to the subcommittee as will best assist it to carry out the purposes for which it is created.

(2) To cooperate with and secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this rule and to direct the sheriff of any county to serve subpoenas, orders, and other process issued by the subcommittee.

(3) To report its findings and recommendations to the Legislature and to the people from time to time and at any time.

(4) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this rule.

(d) The subcommittee is authorized to leave the State of California in the performance of its duties.

Claims for Workers' Compensation

41. The Chairman or Chairwoman of the Committee on Rules of each house, or a designated representative, shall sign any required worker's compensation report regarding injuries or death arising out of and within the course of employment suffered by any member, officer, or employee of the house, or any employee of a standing or investigating committee thereof. In the case of a joint committee, the Chairman or Chairwoman of the Committee on Rules of either house, or a designated representative, may sign any such report with respect to a member or employee of such joint committee.

Information Concerning Committees

42. The Committee on Rules of each house shall provide for a continuous cumulation of information concerning the membership, organization, meetings, and studies of legislative investigating committees. Each Committee on Rules shall be responsible for information concerning the investigating committees of its own house and concerning joint investigating committees under the chairmanship of a member of that house. To the extent possible, each Committee on Rules shall seek to insure that the investigating committees for which it has responsibility under this rule have organized, including the organization of any subcommittees, and have had all topics for study assigned to them within a reasonable period of time.

The information thus cumulated shall be made available to the public by the Committee on Rules of each house and shall be published periodically under their joint direction.

Joint Committees

43. Concurrent resolutions creating joint committees of the Legislature and concurrent resolutions allocating moneys from the Operating Funds of the Assembly and Senate to such committees shall be referred to the Committee on Rules of the respective houses.

Conflict of Interest

44. (a) No Member of the Legislature shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest and of his or her responsibilities as prescribed by the laws of this state.

(b) No Member of the Legislature shall, during the term for which he or she was elected:

(1) Accept other employment which he or she has reason to believe will either impair his or her independence of judgment as to his or her official duties or require him or her, or induce him or her, to disclose confidential information acquired by him or her in the course of and by reason of his or her official duties.

(2) Willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him or her in the course of and by reason of his or her official duties or use any such information for the purpose of pecuniary gain.

(3) Accept or agree to accept, or be in partnership with any person who accepts or agrees to accept, any employment, fee, or other thing of value, or portion thereof, in consideration of his or her appearance, agreeing to appear, or taking any other action on behalf of another person regarding a licensing or regulatory matter, before any state board or agency which is established by law for the primary purpose of licensing or regulating the professional activity of persons licensed, pursuant to state law; provided, that this rule shall not be construed to prohibit a member who is an attorney at law from practicing in such capacity before the Workers' Compensation Appeals Board or the Commissioner of Corporations, and receiving compensation therefor, or from practicing for compensation before any state board or agency in connection with, or in any matter related to, any case, action, or proceeding filed and pending in any state or federal court; and provided that this rule shall not act to prohibit a member from making inquiry for information on behalf of a constituent before a state board or agency, if no fee or reward is given or promised in consequence thereof, and provided that the prohibition contained in this rule shall not apply to a partnership in which the Member of the Legislature is a member if the Member of the Legislature does not share directly or indirectly in the fee resulting from the transaction; and provided that the prohibition

contained in this rule shall not apply in connection with any matter pending before any state board or agency on the operative date of this rule if the affected Member of the Legislature is attorney of record or representative in the matter prior to such operative date.

(4) Receive or agree to receive, directly or indirectly, any compensation, reward, or gift from any source except the State of California for any service, advice, assistance, or other matter related to the legislative process, except fees for speeches or published works on legislative subjects and except, in connection therewith, reimbursement of expenses for actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State of California.

(5) Participate, by voting or any other action, on the floor of either house, or in committee or elsewhere, in the enactment or defeat of legislation in which he or she has a personal interest, except as follows:

(i) If, on the vote for final passage by the house of which he or she is a member, of the legislation in which he or she has a personal interest, he or she first files a statement (which shall be entered verbatim on the journal) stating in substance that he or she has a personal interest in the legislation to be voted on and notwithstanding such interest, he or she is able to cast a fair and objective vote on such legislation, he or she may cast his or her vote without violating any provision of this rule;

(ii) If the member believes that, because of his or her personal interest, he or she should abstain from participating in the vote on the legislation, he or she shall so advise the presiding officer prior to the commencement of the vote and shall be excused from voting on the legislation without any entry on the journal of the fact of his or her personal interest. In the event a rule of the house, requiring that each member who is present vote aye or nay is invoked, the presiding officer shall order the member excused from compliance and shall order entered on the journal a simple statement that the member was excused from voting on the legislation pursuant to law.

(c) A person subject to this rule has an interest which is in substantial conflict with the proper discharge of his or her duties in the public interest and of his or her responsibilities as prescribed in the laws of this state or a personal interest, arising from any situation, within the scope of this rule, if he or she has reason to believe or expect that he or she will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity. He or she does not have an interest which is in substantial conflict with the proper discharge of his or her duties in the public interest and of his or her responsibilities as prescribed by the laws of this state or a personal interest, arising from any situation, within the scope of this rule, if any benefit or detriment accrues to him or her as a member of a business, profession, occupation, or group to no

greater extent than any other member of such business, profession, occupation, or group.

(d) A person subject to the provisions of this rule shall not be deemed to be engaged in any activity which is in substantial conflict with the proper discharge of his or her duties in the public interest and of his or her responsibilities as prescribed by the laws of this state, arising from any situation, or to have a personal interest, arising from any situation, within the scope of this rule, solely by reason of any of the following:

(1) His or her relationship to any potential beneficiary of any situation is one which is defined as a remote interest by Section 1091 of the Government Code or is otherwise not deemed to be a prohibited interest by Section 1091.1 or 1091.5 of the Government Code.

(2) Receipt of a campaign contribution regulated, received, reported, and accounted for pursuant to Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code, so long as the contribution is not made on the understanding or agreement, in violation of law, that the person's vote, opinion, judgment, or action will be influenced thereby.

(e) The enumeration in this rule of specific situations or conditions which are deemed not to result in substantial conflicts with the proper discharge of the duties and responsibilities of a legislator or legislative employee or in a personal interest shall not be construed as exclusive.

The Legislature in adopting this rule recognizes that Members of the Legislature and legislative employees may need to engage in employment, professional, or business activities other than legislative activities, in order to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this rule. However, in construing and administering the provisions of the rule, weight should be given to any coincidence of income, employment, investment, or other profit from sources which may be identified with the interests represented by those sources which are seeking action of any character on matters then pending before the Legislature.

(f) No employee of either house of the Legislature shall, during the time he or she is so employed, commit any act or engage in any activity prohibited by any part of this rule.

(g) No person shall induce or seek to induce any Member of the Legislature to violate any part of this rule.

(h) Violations of any part of this rule are punishable as provided in Section 8926 of the Government Code.

Ethics Committees

45. The Senate Committee on Legislative Ethics and the Assembly Legislative Ethics Committee, respectively, shall receive complaints concerning Members of their house and shall have the power to investigate and make findings and recommendations concerning violations by Members of their house of the provisions of Article 2 (commencing with Section 8920) of Chapter 1 of Part 1 of Division 2 of Title 2 of the Government Code. Each house shall adopt rules governing the establishment and procedures of the committee in its house.

Designating Legislative Sessions

50. Regular sessions shall be identified with the odd-numbered year subsequent to each general election, followed by a hyphen, and then the last two digits of the following even-numbered year. For example: 1973–74 Regular Session.

Designating Extraordinary Sessions

50.3. All extraordinary sessions shall be designated in numerical order by the session in which convened.

Days and Dates

50.5. (a) As used in these rules, "day" means a calendar day, unless otherwise specified.

(b) When the date of a deadline, recess requirement, or circumstance falls on a Saturday, Sunday, or Monday that is a holiday, the date shall be deemed to refer to the preceding Friday. When the date falls on a holiday on a weekday other than a Monday, the date shall be deemed to refer to the preceding day.

Legislative Calendar

51. (a) The Legislature shall observe the following calendar during the first year of the regular session:

(1) Organizational Recess—The Legislature shall meet on the first Monday in December following the general election to organize. Thereafter, each house shall be in recess from such time as it determines until the first Monday in January, except when the first Monday is January 1 or January 1 is a Sunday, in which case, the following Wednesday.

(2) Easter Recess—The Legislature shall be in recess from the 10th day prior to Easter until the Monday after Easter.

(3) Summer Recess—The Legislature shall be in recess from July 14 until August 21. This recess shall not commence until the Budget Bill is enacted.

(4) Interim Study Recess—The Legislature shall be in recess from September 15 until the first Monday in January, except when the first Monday is January 1 or January 1 is a Sunday, in which case, the following Wednesday.

(b) The Legislature shall observe the following calendar for the remainder of the legislative session:

(1) Easter Recess—The Legislature shall be in recess from the 10th day prior to Easter until the Monday after Easter.

(2) Summer Recess—The Legislature shall be in recess from July 5 until August 5. This recess shall not commence until the Budget Bill is enacted.

(3) Final Recess—The Legislature shall be in recess on September 1 until adjournment sine die on November 30.

(c) Recesses shall be from the hour of adjournment on the day specified to reconvene at the time designated by the respective houses.

(d) The recesses specified by this rule shall be designated as joint recesses.

Recall From Recess

52. Notwithstanding the power of the Governor to call a special session, the Legislature may be recalled from joint recess and reconvene in regular session by any of the following means:

(a) It may be recalled by joint proclamation, which shall be entered in the journal, of the Senate Committee on Rules and the Speaker of the Assembly or, in his or her absence from the state, the Assembly Committee on Rules.

(b) Ten or more Members of the Legislature may present a request for recall from joint recess to the Chief Clerk of the Assembly and the Secretary of the Senate. The request shall immediately be printed in the journal. Within 10 days thereafter, the Speaker of the Assembly, or if the Speaker is absent from the state, the Assembly Committee on Rules, and the Senate Committee on Rules shall act upon the request. If they concur in desiring to recall the Legislature from joint recess, they shall issue their joint proclamation entered in the journal no later than 20 days after publication of the request in the journal.

(c) If either or both of the parties specified in subdivision (b) does not concur, 10 or more Members of the Legislature may request the Chief Clerk of the Assembly or the Secretary of the Senate to petition the membership of the respective house. The petition shall be entered in the journal and shall contain a specified reconvening date commencing not later than 20 days after the date of the petition. If two-thirds of the members of the house or each of the two houses

concur, the Legislature shall reconvene on the date specified. The necessary concurrences must be received at least 10 days prior to date specified for reconvening.

Procedure on Suspending Rules by Single House

53. Whenever these rules authorize suspension of the Joint Rules as to a particular bill by action of a single house after approval by the Committee on Rules of that house, the following procedure shall be followed:

(a) A written request to suspend the joint rule shall be filed with the Chief Clerk of the Assembly or the Secretary of the Senate, as the case may be, and shall be transmitted to the Committee on Rules of the appropriate house.

(b) The Assembly Committee on Rules or the Senate Committee on Rules, as the case may be, shall determine whether there exists an urgent need for the suspension of the joint rule with regard to the bill.

(c) If the appropriate rules committee recommends that the suspension be permitted, the member may offer a resolution, without further reference thereof to committee, granting permission to suspend the joint rule. The adoption of the resolution granting such permission shall require an affirmative recorded vote of the elected members of the house in which the request is made.

Introduction of Bills

54. (a) No bill may be introduced in the first year of the regular session after February 24 and no bill may be introduced in the second year of the regular session after February 23. These deadlines shall not apply to constitutional amendments, committee bills introduced pursuant to Assembly Rule 47 or Senate Rule 23, bills introduced in the Assembly with the permission of the Speaker of the Assembly, or bills introduced in the Senate with the permission of the Senate Committee on Rules. Subject to these deadlines, bills may be introduced at any time except when the houses are in joint summer, interim, or final recess. Each house may provide for introduction of bills during a recess other than a joint recess. Bills shall be numbered consecutively during the regular session.

(b) The Desks of the Senate and Assembly shall remain open, during a joint recess, other than a joint Easter, summer, interim, or final recess, for introduction of bills, during business hours on Monday through Friday, inclusive, except holidays. Bills received at the Senate Desk during such periods shall be numbered and printed. After printing, such bills shall be delivered to the Secretary of the Senate and shall be referred by the Senate Committee on Rules to a standing committee. Bills received at the Assembly Desk during such periods shall be numbered, printed, and referred to a committee by the Assembly Committee on Rules. After printing, such bills shall be

delivered to the Chief Clerk of the Assembly. On the reconvening of each house, the bills shall be read the first time, and shall be delivered to the committee to which they were referred.

(c) A member may not author a bill during a session that would have substantially the same effect as a bill he or she had previously introduced during that session. This restriction shall not apply in cases where a previously introduced bill has been vetoed by the Governor or has had its provisions "chaptered out" by a later chaptered bill pursuant to Section 9605 of the Government Code. An objection may be raised only while the bill is being considered by the house in which it is introduced. In such case the objection shall be referred to the Committee on Rules of the house for a determination. The bill shall remain on file or with a committee, as the case may be, until such determination is made. If upon consideration of the objection the Committee on Rules determines that the bill objected to would have substantially the same effect as another bill previously introduced during the session by the author, the bill objected to shall be stricken from the file or returned to the desk by the committee, as the case may be, and shall not be acted upon during the remainder of the session. If the Committee on Rules determines that the bill objected to would not have substantially the same effect as a bill previously introduced during the session by the author, the bill may thereafter be acted upon by the committee or the house, as the case may be. The Committee on Rules may obtain such assistance as it may desire from the Legislative Counsel as to the similarity of a bill or amendments to a prior bill.

This joint rule may be suspended by approval of the Committee on Rules and three-fourths vote of the membership of the house.

(d) During a joint recess, the Chief Clerk of the Assembly or Secretary of the Senate shall order the preparation of preprint bills when so ordered by any of the following:

(1) The Speaker of the Assembly.

(2) The Committee on Rules of the respective houses.

(3) A committee with respect to bills within the subject matter jurisdiction of the committee.

Preprint bills shall be designated as such and shall be printed in the order received and numbered in the order printed. To facilitate subsequent amendment, preprint bills shall be so prepared that when introduced as a bill, the page and the line numbers will not change. The Chief Clerk of the Assembly and Secretary of the Senate shall publish a list periodically of such preprint bills showing the preprint bill number, the title, and the Legislative Counsel's Digest. The Speaker of the Assembly and Senate Committee on Rules may refer all preprint bills to committee for study.

30-Day Waiting Period

55. No bill other than the Budget Bill may be heard or acted upon by committee or either house until the bill has been in print for 30 days. The date a bill is returned from the printer shall be entered in the history. This rule may be suspended concurrently with the suspension of the requirement of Section 8 of Article IV of the Constitution or if such period has expired, this rule may be suspended by approval of the Committee on Rules and two-thirds vote of the house in which the bill is being considered.

Return of Bills

56. Bills introduced in the first year of the regular session and passed by the house of origin on or before the January 31st constitutional deadline are "carryover bills." Immediately after January 31, bills introduced in the first year of the regular session that do not become "carryover bills" shall be returned to the Chief Clerk of the Assembly or Secretary of the Senate, respectively. Notwithstanding Rule 4, as used in this rule, "bills" does not include constitutional amendments.

Appropriation Bills

57. Appropriation bills that may not be sent to the Governor shall be held, after enrollment, by the Chief Clerk of the Assembly or Secretary of the Senate, respectively. The bills shall be sent to the Governor immediately after the Budget Bill has been enacted.

Urgency Clauses

58. An amendment to add a section to a bill to provide that the act shall take effect immediately as an urgency statute shall not be adopted unless the author of the amendment has first secured the approval of the Committee on Rules of the house in which the amendments are offered.

Vetoes

58.5. The Legislature may consider a Governor's veto for only 60 days, not counting days when the Legislature is in joint recess.

Publications

59. During periods of joint recess, weekly, if necessary, the following documents shall be published: files, histories, and journals.

Committee Hearings

60. (a) No standing committee or subcommittee thereof may take action on a bill at any hearing held outside of Sacramento.

(b) A committee may hear the subject matter of a bill or convene for an informational hearing during a period of recess. Four days' notice in the daily file is required prior to the hearing.

(c) No bill may be acted upon by a committee during a joint recess.

Deadlines

61. The following deadlines shall be observed by the Senate and Assembly. After each deadline, the Secretary of the Senate and the Chief Clerk of the Assembly shall not accept committee reports from their respective committees except as otherwise provided in this rule:

(a) Odd-numbered year:

(1) Feb. 24—Last day for bills to be introduced.
(2) April 21—Last day for policy committees to hear and report to fiscal committees fiscal bills introduced in their house.
(3) May 12—Last day for policy committees to hear and report to the floor nonfiscal bills introduced in their house.
(4) May 19—Last day for policy committees to meet prior to June 5.
(5) May 26—Last day for fiscal committees to hear and report to the floor bills introduced in their house.
(6) May 26—Last day for fiscal committees to meet prior to June 5.
(7) June 2—Last day for each house to pass bills introduced in their house.
(8) June 5—Committee meetings may resume.
(9) July 14—Last day for policy committees to meet and report bills.
(10) Sept. 1—Last day for fiscal committees to meet and report bills.
(11) Sept. 5 through Sept. 15—Floor session only. No committee may meet for any purpose.
(12) Sept. 15—Last day for each house to pass bills.

(b) Even-numbered year:

(1) Jan. 19—Last day for policy committees to hear and report to fiscal committees fiscal bills introduced in their house in the odd-numbered year.
(2) Jan. 26—Last day for any committee to hear and report to the floor bills introduced in their house in the odd-numbered year.
(3) Jan. 31—Last day for each house to pass bills introduced in their house in the odd-numbered year.
(4) Feb. 23—Last day for bills to be introduced.
(5) April 26—Last day for policy committees to hear and report to fiscal committees fiscal bills introduced in their house.
(6) May 10—Last day for policy committees to hear and report to the floor nonfiscal bills introduced in their house.
(7) May 17—Last day for policy committees to meet prior to June 3.
(8) May 24—Last day for fiscal committees to hear and report to the floor bills introduced in their house.
(9) May 24—Last day for fiscal committees to meet prior to June 3.
(10) May 31—Last day for each house to pass bills introduced in their house.
(11) June 3—Committee meetings may resume.
(12) July 5—Last day for policy committees to meet and report bills.
(13) Aug. 16—Last day for fiscal committees to meet and report bills.
(14) Aug. 19 through Aug. 30—Floor session only. No committee may meet for any purpose.
(15) Aug. 30—Last day for each house to pass bills.

(c) If a bill is acted upon in committee before the relevant deadline and the committee votes to report the bill out with amendments that have not at the time of the vote been prepared by the Legislative Counsel, the Secretary of the Senate and the Chief Clerk of the Assembly may subsequently receive a report recommending the bill for passage or for rereferral together with the amendments at any time within two legislative days after the deadline or, if the Legislature has recessed for the Summer Recess, within seven calendar days after the deadline.

(d) Notwithstanding subdivisions (a) and (b), a policy committee may report a bill to a fiscal committee on or before the relevant deadline for reporting nonfiscal bills to the floor, if, after the policy

committee deadline for reporting the bill to fiscal committee, the Legislative Counsel's Digest is changed to indicate reference to fiscal committee.

(e) Bills in the house of origin not acted upon during the odd-numbered year as a result of the deadlines imposed in subdivision (a) may be acted upon when the Legislature reconvenes after the interim study joint recess, or at any time the Legislature is recalled from the interim study joint recess.

(f) The deadlines imposed by this rule shall not apply to the rules committees of the respective houses.

(g) The deadlines imposed by this rule shall not apply in instances where a bill is referred to committee under Rule 26.5.

(h) The deadlines imposed by this rule shall not apply in instances where a bill is referred to a committee under Assembly Rule 77.2.

(i) (1) Notwithstanding subdivisions (a) and (b), a policy committee or fiscal committee may meet for the purpose of hearing and reporting a constitutional amendment, or a bill that would go into immediate effect pursuant to subdivision (c) of Section 8 of Article IV of the Constitution of California, at any time other than those periods when no committee may meet for any purpose.

(2) Notwithstanding subdivisions (a) and (b), either house may meet for the purpose of considering and passing a constitutional amendment, or a bill that would go into immediate effect pursuant to subdivision (c) of Section 8 of Article IV of the Constitution of California, at any time during the session.

(j) This rule may be suspended as to any particular bill by approval of the Committee on Rules and two-thirds vote of the membership of the house.

Committee Procedure

62. (a) Notice of a hearing on a bill by the committee of first reference in each house or notice of an informational hearing shall be published in the file at least four days prior to the hearing. Otherwise, notice shall be published in the file two days prior to the hearing. Such notice may be waived by a majority vote of the house in which the bill is being considered. A bill may be set for hearing in a committee only three times. A bill is "set" for purposes of this subdivision whenever notice of the hearing has been published in the file for one or more days. If a bill is set for hearing, and the committee, on its own initiation and not the author's, postpones the hearing on the bill or adjourns the hearing while testimony is being taken, such hearing shall not be counted as one of the three times a bill may be set. After hearing the bill, the committee may vote on the bill. If the hearing notice in the file specifically indicates that "testimony only" will be taken, such hearing shall not be counted as one of the three times a bill may be set. A committee may not vote on a bill so noticed until it has been heard in accordance with this rule. After a

committee has voted on a bill, reconsideration may be granted only one time. Reconsideration may be granted within 15 legislative days or prior to the interim study joint recess, whichever first occurs. A vote on reconsideration cannot be taken without the same notice required to set a bill unless such vote is taken at the same meeting at which the vote to be reconsidered was taken and the author is present. When a bill fails to get the necessary votes to pass it out of committee or upon failure to receive reconsideration, it shall be returned to the Chief Clerk of the Assembly or Secretary of the Senate of the house of the committee and may not be considered further during the session.

This subdivision may be suspended with respect to a particular bill by approval of the Committee on Rules and two-thirds vote of the members of the house.

(b) If the committee adopts amendments other than those offered by the author and orders the bill reprinted prior to its further consideration, the hearing shall not be the final time a bill may be set under subdivision (a) of this rule.

(c) When a standing committee takes action on a bill, the vote shall be by roll call vote only. All roll call votes taken by a standing committee shall be recorded by the committee secretary on forms provided by the Chief Clerk of the Assembly and the Secretary of the Senate. The chairman or chairwoman of each standing committee shall promptly transmit a copy of the record of the roll call votes to the Chief Clerk of the Assembly or the Secretary of the Senate, respectively, who shall cause the votes to be published as prescribed by each house.

The provisions of this subdivision shall also apply to action of a committee on a subcommittee report. The rules of each house shall prescribe the procedure as to roll call votes on amendments.

Any committee may, with the unanimous consent of the members present, substitute a roll call from a prior bill, provided that the members whose votes are substituted are present at the time of the substitution.

At no time shall a bill be passed out by a committee without a quorum being present.

The provisions of this subdivision shall not apply to:

(1) Procedural motions which do not have the effect of disposing of a bill.

(2) Withdrawal of a bill from a committee calendar at the request of an author.

(3) Return of bills to the house where the bills have not been voted on by the committee.

(4) The assignment of bills to committee.

(d) The chairman or chairwoman of the committee hearing a bill, may, at any time, order a call of the committee. Upon a request by any member of a committee or the author in person, the chairman or chairwoman shall order the call.

In the absence of a quorum, a majority of the members present may order a quorum call of the committee and compel the attendance of absentees. The chairman or chairwoman shall send the Sergeant at Arms for those members who are absent and not excused by their respective house.

When a call of a committee is ordered by the chairman or chairwoman with respect to a particular bill, he or she shall send the Sergeant at Arms or any other person to be appointed for that purpose for those members who have not voted on that particular bill and are not excused.

A quorum call or a call of the committee with respect to a particular bill may be dispensed with by the chairman or chairwoman without objection by any member of the committee, or by a majority of the members present.

If a motion is adopted to adjourn the committee while the committee is operating under a call, the call shall be dispensed with and any pending vote announced.

The committee secretary shall record the votes of members answering a call. The rules of each house may prescribe additional procedures for a call of a committee.

Redistricting Bills

62.5. This rule applies only to bills affecting the boundaries of legislative, congressional, or State Board of Equalization districts.

(a) Except as specifically provided in this rule, Rules 28, 28.1, 29, 29.5, 30, 30.5, 30.7, 61 (except for paragraph (12) of subdivision (a) and paragraph (15) of subdivision (b) of Rule 61), and 62 shall not apply to bills affecting the boundaries of legislative, congressional, or State Board of Equalization districts.

(b) If the Senate (in the case of a Senate bill) or the Assembly (in the case of an Assembly bill) refuses to concur in amendments to a bill made by the other house, a committee on conference shall be appointed. The Speaker of the Assembly and the Senate Committee on Rules shall each appoint a committee on conference of three members, consisting of two members of the majority party and one member not of the majority party. The Secretary of the Senate and the Chief Clerk of the Assembly shall immediately notify the other house of the action taken.

(c) When a bill affecting the boundaries of legislative, congressional, or State Board of Equalization districts has been referred to a committee on conference, the chair of the committee on conference shall immediately request the Senate Committee on Elections and Reapportionment and the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments to hold a public hearing on the bill. The committee on conference shall also hold a public hearing on the bill. The hearings of the policy

committees and the committee on conference may be noticed and held concurrently.

(d) If either or both of the policy committees hold a public hearing on a bill pursuant to the request of the chair of the committee on conference, the policy committees may consider amendments to the bill, and may make recommendations on amendments to the committee on conference. A policy committee recommendation for an amendment may only be adopted by a roll call vote of the members of the policy committee.

(e) All proposed reports of a committee on conference, all proposed amendments to a proposed report of a committee on conference, and all proposed amendments presented to a policy committee shall be accompanied by appropriate maps, and no committee vote shall be taken on any proposed report of a committee on conference, any proposed amendment to a proposed report of a committee on conference, or any proposed amendment presented to a policy committee unless the proposed report or proposed amendment, with accompanying maps, has been available to the public for at least 24 hours. District boundaries contained in any proposed report or any proposed amendment shall not be required to be prepared or approved as to form by Legislative Counsel if the accompanying maps adequately reflect the district boundaries.

(f) All hearings of the policy committees and the committee on conference shall be open and readily accessible to the public, and shall be noticed in the Daily File for not less than two calendar days.

(g) The provisions of subdivision (e) prohibiting a committee vote on any proposed report of a committee on conference, any proposed amendment to a proposed report of a committee on conference, or any proposed amendment presented to a policy committee unless the amendment, accompanied by appropriate maps, has been available to the public for at least 24 hours shall not apply in any of the following situations:

(1) The amendment proposed to a policy committee or the committee on conference does not change any district boundaries.

(2) The amendment proposed to a policy committee or the committee on conference is required to correct a technical error in the bill, and the proposed amendment would shift no more than 1 percent of the population of any district to any other district or districts.

(3) The amendment is a policy committee or committee on conference amendment that is proposed in response to amendments that have been proposed to the committee.

(h) Except as provided in subdivision (i), no vote may be taken in either house on any bill or any report of the committee on conference on that bill unless the bill or the report has been in print in Legislative Counsel form and available to the public, accompanied by appropriate maps, for at least 24 hours.

(i) If either house refuses to adopt the report of the committee on conference, the bill may be returned to the committee on conference for further consideration. If the bill is returned to the committee on conference for an amendment described in paragraph (1) or (2) of subdivision (g), the notice requirements of subdivisions (e) and (h) shall not apply.

(j) Notwithstanding any other rule to the contrary, this rule may be suspended upon a majority vote of the membership of each house.

Uniform Rules

63. No standing committee of either house shall adopt or apply any rule or procedure governing the voting upon bills which is not equally applicable to the bills of both houses.

Votes on Bills

64. Every meeting of each house and standing committee or subcommittee thereof where a vote is to be taken on a bill, or amendments to a bill, shall be public.

Conflicting Rules

65. The provisions of Rule 50 and following of these rules prevail over any conflicting joint rule with a lesser number.

RESOLUTION CHAPTER 15

Senate Concurrent Resolution No. 56—Relative to the National Girls Initiative—Take Our Daughters To Work Day.

[Filed with Secretary of State April 22, 1996.]

WHEREAS, According to the 1992 "AAUW Report: How Schools Shortchange Girls," although most girls feel confident in themselves at the age of nine years, more than two-thirds of them have lost this confidence by the time they reach high school; and

WHEREAS, This lack of self-esteem is evidenced in disturbing new statistics developed by the Minnesota Women's Fund, "Reflections on Risk: Growing Up Female in Minnesota," 1990, and "American's Adolescents: How Healthy Are They," part of the 1990 American Medical Association's series "Profiles of Adolescent Health": serious eating disorders are appearing in girls as young as 11 years; over one million girls between the ages of 12 and 19 years become pregnant each year; adolescent depression is twice as likely to occur in girls

than boys, causing one out of five girls to attempt suicide before the age of 20 years; and

WHEREAS, Testimony by Susan McGee Bailey on "Women and K-12 Science and Mathematics Education" before the Subcommittee on Energy of the United States House of Representatives, on June 28, 1994, demonstrates that a girl's confidence level during her teen years impacts her adulthood: girls enter mathematics and science fields far less frequently than boys do, not only because girls receive less encouragement from educators in these areas but because they tend to view mathematics incompetence as personal failure; and

WHEREAS, Research by Lyn Mikel Brown and Carol Gilligan in "Meeting at the Crossroads: Psychology and Girls' Development," 1992, shows that the presence of a caring adult role model is critical to the development of a confident and competent girl; and

WHEREAS, Public awareness of the need for this mentoring is crucial not only to the well-being of girls but to the economic health of our country; and

WHEREAS, The 1993 "Handbook on Women Workers: Trends and Issues," by the Labor Women's Bureau of the United States Department of Labor, shows that in the 21st century most new positions in the work force will be filled by women, and it is in our national interest to invest in today's girls, because our economic future depends on tomorrow's women; and

WHEREAS, In response to these findings, the Ms. Foundation created the National Girls Initiative—Take Our Daughters To Work Day to make girls visible, valuable, and heard; and

WHEREAS, The California Cable Television Association, the LIFETIME television cable network, and the Hollywood Policy Center are actively supporting and taking the electronic media lead in this regard; and

WHEREAS, The Take Our Daughters To Work program is the public education component of this initiative, and will set up an environment in which the public, the media, employers, teachers, and parents can acknowledge girls' intelligence and desire for information, and will allow girls, in the company of a caring adult, to talk with employers about both the gains made by the movements for women's equality and civil rights, and the challenges that lie ahead to diversify the work force; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims Thursday, April 25, 1996, as "Take Our Daughters To Work Day," when mothers, fathers, friends, and relatives are encouraged to take girls ages 9 to 15 years to work with them for a day as a means to spark their vision about their own future in the work force; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 16

Assembly Concurrent Resolution No. 82—Relative to the California Day of Remembrance of the Armenian Genocide of 1915–1923.

[Filed with Secretary of State April 24, 1996.]

WHEREAS, One and one-half million men, women, and children of Armenian descent were victims of the brutal genocide perpetrated by the Turkish Ottoman Empire from 1915 to 1923, inclusive; and

WHEREAS, The Armenian genocide and massacres of the Armenian people have been recognized as an attempt to eliminate all traces of a thriving and noble civilization over 3,000 years old; and

WHEREAS, To this day revisionists still inexplicably deny the existence of these horrific events; and

WHEREAS, Before the implementation of the Jewish holocaust, in order to encourage his followers, Hitler asked, "Who remembers the Armenians?"; and

WHEREAS, By consistently remembering and openly condemning the atrocities committed against the Armenians, Californians are highly sensitive to the need for constant vigilance to prevent similar atrocities in the future; and

WHEREAS, Recognition of the eighty-first anniversary of this genocide is crucial to ensuring against the repetition of future genocides and educating people about the atrocities connected to these horrific events; and

WHEREAS, Armenia is now a free and independent republic, having embraced democracy following nearly 70 years of oppressive Soviet domination; and

WHEREAS, California is home to the largest population of people of Armenian descent outside the Republic of Armenia; and

WHEREAS, Armenian-Americans living in California have greatly enriched our state through their leadership in business, agriculture, academia, government, and the arts; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California joins the Armenian-American community in honoring the memory of the victims of genocide throughout the world; and be it further

Resolved, That the Legislature of the State of California hereby designates April 24, 1996, as the "California Day of Remembrance of the Armenian Genocide of 1915–1923"; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor and the author for appropriate distribution.

RESOLUTION CHAPTER 17

Senate Concurrent Resolution No. 48—Relative to Unwed Teenage Pregnancy Prevention Month.

[Filed with Secretary of State April 25, 1996.]

WHEREAS, There is a need to emphasize the importance of a strong partnership between the community and the family in helping young people maximize their potential and avoid life compromising behaviors; and

WHEREAS, The State of California is committed to involving businesses, media, temples, mosques, churches, synagogues, and other religious institutions, parents, educational institutions, policymakers, agencies, and health care providers in helping to prevent unwed teenage pregnancy; and

WHEREAS, Unwed teenage pregnancy has been linked with other service issues facing our community, including crime, poverty, child abuse, infant mortality, unemployment, substance abuse, and violence; and

WHEREAS, Unwed teenage pregnancy significantly affects the health, economic, and educational future of teenagers; and

WHEREAS, Unwed teenage pregnancy and parenthood is a significant factor in school dropouts among females and males and in their long-term welfare dependency, adding over $1 billion dollars annually to taxpayers' costs; and

WHEREAS, The California unwed teenage pregnancy rate is one-third higher than the nation's average and is, in fact, the highest in the United States; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature proclaims April 1996 as Unwed Teenage Pregnancy Prevention Month; and be it further

Resolved, That the Legislature encourages people in all communities to participate in appropriate ceremonies and activities during Unwed Teenage Pregnancy Prevention Month.

RESOLUTION CHAPTER 18

Assembly Concurrent Resolution No. 64—Relative to Sexual Assault Awareness Month.

[Filed with Secretary of State April 29, 1996.]

WHEREAS, The American Medical Association has stated that a "woman is raped every 46 seconds in the United States" and that sexual assault is a "silent epidemic"; and

WHEREAS, Women, children, and men are all victims of sexual assault and it is estimated that one in three women, one in four girls, one in six boys, and one in 11 men will be victims at least once in their lifetimes; and

WHEREAS, Women, children, and men suffer multiple types of sexual violence, including, but not limited to, stranger rape, date rape, spousal rape, gang rape, serial rape, trafficking and prostitution, pornography, ritual abuse, sexual harassment, incest, child sexual molestation, and stalking; and

WHEREAS, Women, children, and men should be free from sexual violence in their homes, in the streets, in their workplaces, and in their recreational activities; and

WHEREAS, The Federal Bureau of Investigation estimates that only one in nine women report sexual assault; and

WHEREAS, Rape and sexual assault affect women, children, and men of all racial, cultural, and economic backgrounds; and

WHEREAS, It is not uncommon for women to experience multiple forms of sexual violence in the course of their lifetimes; and

WHEREAS, Emotional and physical scars resulting from sexual violence are often severe and longlasting; and

WHEREAS, A coalition of rape crisis centers, known as the California Coalition Against Sexual Assault, has emerged to directly confront this crisis with the cooperation of law enforcement agencies, churches, health care providers, and other helping professionals from California's diverse communities; and

WHEREAS, It is important to recognize the compassion and dedication of the individuals involved in this effort, applaud their commitment, and increase public understanding of this significant problem; and

WHEREAS, It is important to recognize the strength, courage, and challenges of the victims and survivors of sexual assault and their family and friends as they struggle to cope with the reality of sexual assault; and

WHEREAS, It is important to recognize that not all victims of sexual assault survive, either at the time of the assault or later, due to the horrific long-term trauma that sexual assault often inflicts upon victims; and

WHEREAS, There are rape prevention and education efforts underway throughout California to challenge the societal myths and behaviors that perpetuate rape and to engage communities in a common goal of ending sexual assault; and

WHEREAS, There is a Sexual Assault Awareness Week in October; and

WHEREAS, That one week has now grown to a full month of recognition and activities promoted by the National Coalition Against Sexual Assault to increase awareness of sexual assault and to create solutions; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the month of April 1996 as Sexual Assault Awareness Month; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President of the United States, to the Governor, to the United States Director on Victims of Crime, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 19

Assembly Concurrent Resolution No. 80—Relative to Child Passenger Safety Week.

[Filed with Secretary of State April 29, 1996.]

WHEREAS, The number one preventable cause of death and injury of children and young adults is the automobile collision; and

WHEREAS, Approximately 200 children under 16 years of age are killed and over 28,000 injured in automobile collisions each year in California; and

WHEREAS, Up to 71 percent of these children would be alive today if they had been properly restrained in crash-tested car safety seats or safety belts; and

WHEREAS, Infants and young children are not capable of initiating action to use proper restraints and are not protected adequately by automatic safety belts or air bags; and

WHEREAS, Only about 50 percent of children in this age group are protected by proper restraint use; and

WHEREAS, Crash-tested safety seats are moderately priced and widely available for purchase at retail stores and for rent from low/no cost car safety seat loan programs throughout California; and

WHEREAS, The State of California requires that until children are both four years of age and weigh 40 pounds or more, they must be restrained in child safety seats when riding in light trucks or in passenger vehicles, and requires all other vehicle occupants to use safety belts; and

WHEREAS, The goal of Safety-Belt Safe U.S.A. is to further the right of every child to protection from injury or death while being transported in a motor vehicle; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That April 28 to May 4, 1996, be declared Child Passenger Safety Week; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor.

RESOLUTION CHAPTER 20

Assembly Concurrent Resolution No. 78—Relative to Jerusalem.

[Filed with Secretary of State May 8, 1996.]

WHEREAS, The City of Jerusalem, the capital of Israel, has served as a focus for cultural and spiritual history for 3,000 years; and

WHEREAS, The City of Jerusalem has remained a holy city to the world's major monotheistic faiths; and

WHEREAS, Israeli "basic law" relating to the City of Jerusalem affirms that holy places of all religions be protected from desecration and are to remain freely accessible; and

WHEREAS, The City of Jerusalem and the State of California are both dedicated to religious freedom and ethnic, racial, and cultural harmony and diversity; and

WHEREAS, The people of Jerusalem have close ties to the people of California; and

WHEREAS, Each year many Californians, including high school and college students, travel to Jerusalem to learn more about the city's rich history and broaden their knowledge; and

WHEREAS, The City of Jerusalem, praised by prophets, enshrined in literature and liturgy, continues to inspire greatness in all who visit; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the people of California congratulate the City of Jerusalem on the celebration of its 3,000th anniversary and its rich cultural and spiritual history and extend sincere best wishes for 3,000 more years to come.

RESOLUTION CHAPTER 21

Assembly Concurrent Resolution No. 86—Relative to California Bike Commute Day.

[Filed with Secretary of State May 13, 1996.]

WHEREAS, Bicycle commuting is an effective means to conserve energy and reduce pollution; and

WHEREAS, Bicycle commuting promotes the "livability" of communities by reducing traffic noise and congestion; and

WHEREAS, Many businesses have made efforts to help customers and employees commute by bicycle, including the installation of bicycle parking and other commute facilities; and

WHEREAS, Bicycle transportation is an integral part of the "multi-modal" transportation systems planned by federal, state, regional, and local transportation agencies; and

WHEREAS, Local bicycle commuting promotions, often known as "bike-to-work" days, successfully encourage bicycle commuting; and

WHEREAS, The California Bicycle Coalition and the American Lung Association of California have worked cooperatively with many state and local groups and individuals to designate a single day to promote bicycle commuting; and

WHEREAS, The month of May is Clean Air Month as a part of the American Lung Association of California's efforts to promote air quality; and

WHEREAS, The month of May is National Bike Month, promoting the bicycle as a means of transportation and recreation; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That Thursday, May 16, 1996, is proclaimed California Bike Commute Day throughout the state; and be it further

Resolved, That all state agencies are encouraged to participate in California Bike Commute Day through the use of existing transportation coordinators and programs; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, air pollution control districts and air quality management districts, councils of government, the California State Association of Counties, and the League of California Cities.

RESOLUTION CHAPTER 22

Senate Concurrent Resolution No. 55—Relative to the Viggo "Vic" Meedom Memorial Bridge.

[Filed with Secretary of State May 28, 1996.]

WHEREAS, Viggo "Vic" Meedom was born in Denmark on July 11, 1894, and served in the United States Army during World War I; and

WHEREAS, Mr. Meedom died in October of 1995 at the age of 101; and

WHEREAS, Mr. Meedom devoted tremendous energy during his lifetime to helping Del Norte County and its residents, serving the county as a member of the Crescent City Council, a member of the Del Norte County Board of Supervisors, and an original member of the Del Norte County Local Hospital District Board of Directors; and

WHEREAS, Mr. Meedom spent 27 years influencing the practice and delivery of health care in Del Norte County and the State of California, highlighted by his appointment by then Governor Earl Warren in 1947 to the first California Advisory Council to the Department of Public Health; and

WHEREAS, His endeavors in the health care profession were recognized when Mr. Meedom won the prestigious Walker Fellowship in 1975 to study health facilities and health systems agencies in other countries; and

WHEREAS, Viggo "Vic" Meedom also served as a valuable resource to the Del Norte County Historical Society by providing a great number of documents and personal recollections; and

WHEREAS, Mr. Meedom lived an exemplary life, providing outstanding service to Del Norte County, the State of California, and the United States; and

WHEREAS, Hardscrabble Bridge located on State Highway Route 199 in Del Norte County would provide a unique opportunity to honor one of Del Norte County's outstanding citizens; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Hardscrabble Bridge located on State Highway Route 199, six miles east of Hiouchi Village in Del Norte County, is hereby officially redesignated the Viggo "Vic" Meedom Memorial Bridge; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing this special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 23

Assembly Joint Resolution No. 58—Relative to illegal, undocumented alien prisoners.

[Filed with Secretary of State May 28, 1996.]

WHEREAS, There are approximately 137,000 inmates incarcerated in California's 31 state prison facilities and 38 prison camps; and

WHEREAS, The cost of housing one inmate in state prison in California for one year exceeds $21,000; and

WHEREAS, The number of felons incarcerated in California's state prison system is expected to increase by 15,000 felons each year; and

WHEREAS, Felons are often housed two per cell, and in double-bunked dormitory beds; and

WHEREAS, The housing capacity within existing prisons is being rapidly filled with dangerous, violent, and repeat felons; and

WHEREAS, All prison housing capacity in California will be exhausted by late 1998; and

WHEREAS, Approximately 12 percent of all inmates incarcerated in California's state prison system are illegal, undocumented aliens; and

WHEREAS, These illegal, undocumented aliens occupy the equivalent bed space of five prison facilities; and

WHEREAS, Over the past 10 years, the budget of the California Department of Corrections has increased at an annual rate of about 8.1 percent, a much faster rate than budgets for other state agencies; and

WHEREAS, Without this sizable illegal, undocumented alien population housed in California's state prison system, money that is currently being allocated to the California Department of Corrections could be used instead to build additional public schools and universities, or be appropriated to provide for increased public safety; and

WHEREAS, It is the responsibility of the federal government to establish the nation's immigration policy; and

WHEREAS, The federal government has been negligent in controlling the flow of illegal, undocumented aliens into the United States; and

WHEREAS, The federal government has not adequately compensated the people of California for the costs incurred by the federal government's negligence in failing to control the flow of illegal, undocumented aliens into the United States; and

WHEREAS, The undocumented inmates incarcerated in California's state prison system could be imprisoned within their country of origin at less expense to the people of California; and

WHEREAS, The United States Constitution explicitly prohibits states from entering into a treaty with any foreign nation; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature requests the President of the United States, with United States Senate ratification, to make treaties with foreign governments to provide for the incarceration of illegal, undocumented alien prisoners in their respective countries of origin; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, to the President and Vice President of the United States, to the Speaker of the House of Representatives,

and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 24

Assembly Joint Resolution No. 48—Relative to illegal aliens.

[Filed with Secretary of State June 17, 1996.]

WHEREAS, The State of California and its citizens respect the rights of all people; and

WHEREAS, The State of California is charged with protecting the lives and property of citizens, legal residents, and all visitors to the state; and

WHEREAS, Persons illegally entering the United States of America are in violation of its laws; and

WHEREAS, Some illegal aliens are a danger to the law-abiding citizens, legal residents, and visitors of the State of California and the police who protect those in this state legally; and

WHEREAS, An illegal alien criminal shot and seriously wounded an Anaheim police officer on September 8, 1995; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the 104th Congress and the President of the United States to deal aggressively with the problem of illegal alien criminals in the State of California, including the stationing of an officer of the Immigration and Naturalization Service at each detention facility in the state on a regular, daily basis to begin the deportation process of all illegal criminals as soon as they are detected and to ensure that they are not released into our communities for any reason; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Attorney General, the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 25

Senate Joint Resolution No. 36—Relative to cotton insect pest eradication.

[Filed with Secretary of State June 17, 1996.]

WHEREAS, Cotton is an important agricultural commodity in California, as well as in other states in the American Southwest; and

WHEREAS, The value of the cotton crop in California in 1994 exceeded $1 billion; and

WHEREAS, The cotton crop in California is threatened by insect pests including the cotton pink bollworm, the boll weevil, and the silverleaf whitefly; and

WHEREAS, The International Cotton Pest Work Committee is an informal organization of volunteers established approximately 35 years ago for the purpose of coordinating research and pest control measures between the United States and Mexico; and

WHEREAS, Since 1967, the United States Department of Agriculture (USDA), in conjunction with the International Cotton Pest Work Committee, has funded and conducted a quarantine program to control and eradicate the cotton pink bollworm; and

WHEREAS, The USDA, together with the International Cotton Pest Work Committee, also has coordinated a program to develop Integrated Pest Management (IPM) techniques for eventual eradication of the cotton pink bollworm; and

WHEREAS, Due to successful IPM and quarantine programs in California and Arizona, the boll weevil has been eradicated in those states; and

WHEREAS, Eradication of the boll weevil in other southwestern states and in Mexico is necessary to ensure that the boll weevil will not be reintroduced into California and Arizona; and

WHEREAS, The State of California needs the help of the USDA in coordinating programs for the eradication of the boll weevil with New Mexico and Texas and with Mexico; and

WHEREAS, Infestations of the silverleaf whitefly in recent years have had a devastating effect on not only cotton, but on alfalfa, vegetable, and melon crops in California and the other southwestern states and in Mexico; and

WHEREAS, The USDA, in conjunction with the International Cotton Pest Work Committee, has been conducting IPM research with the goal of controlling and eradicating the silverleaf whitefly; and

WHEREAS, It is essential that the USDA continue to coordinate these efforts and to provide the scientific resources necessary to control and eradicate the silverleaf whitefly, which can only be successful if conducted on an international scale; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to do all of the following:

(1) Continue to staff the position of Project Coordinator with Mexico within the Animal and Plant Health Inspection Services (APHIS) branch of the USDA for international cotton pest programs.

(2) Make eradication of the cotton pink bollworm one of the USDA's highest priorities and appropriate an additional $3.5 million per year for the program.

(3) Coordinate, through the International Cotton Pest Work Committee, the project to eradicate the cotton pink bollworm with the government of Mexico, and the States of California, Arizona, Texas, and New Mexico.

(4) Make completion of the USDA Boll Weevil Eradication Program in the southwestern United States and in Mexico one of USDA's highest priorities, and continue to appropriate $1 million per year for that purpose.

(5) Make development of IPM strategies for controlling and ultimately eradicating the silverleaf whitefly one of the USDA's highest priorities and continue to appropriate $7 million per year for that purpose.

(6) Require the USDA to jointly coordinate with the International Cotton Pest Work Committee the development of an areawide, binational, IPM program for the management of the silverleaf whitefly; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 26

Assembly Concurrent Resolution No. 59—Relative to Lake Domenigoni.

[Filed with Secretary of State June 20, 1996.]

WHEREAS, The Metropolitan Water District of Southern California is constructing a reservoir in the Domenigoni Valley that is currently known as the "East Side Reservoir"; and

WHEREAS, The district has designated an ad hoc committee to officially name the reservoir; and

WHEREAS, The valley is named after the Domenigoni family; and

WHEREAS, Angelo Domenigoni immigrated to America from Switzerland in 1874 and, with his wife, Maria Antonia, built a successful farming and dairy business, becoming a founding citizen of the area; and

WHEREAS, The fifth generation of Angelo and Maria Antonia Domenigoni's descendants still lives and farms in the Domenigoni Valley; and

WHEREAS, The residents of the Domenigoni Valley desire to preserve the heritage of the valley; and

WHEREAS, A project of this scale should acknowledge the history of the valley and the people who have helped to build many of the businesses and institutions in the area, rather than a single person; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby recommends that the reservoir and its features be officially named as follows:

1. The reservoir be named "Lake Domenigoni" in recognition of the historical name for the valley which will be dammed and filled to create the reservoir.

2. The east side and west side recreation areas at the reservoir be named the "Searl Ranch Recreation Area" and the "Garbani Farms Recreation Area," respectively, in recognition of other great farming families that have lived and farmed hundreds of acres in the Domenigoni Valley area.

3. Where the terrain of the reservoir dictates a specific name for a geographic point of interest, such as a cove, peak, point, or bay, the name recognize the Native American heritage of the area; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Metropolitan Water District of Southern California, Andy and Cindy Domenigoni, and the author for appropriate further distribution.

RESOLUTION CHAPTER 27

Senate Concurrent Resolution No. 61—Relative to Autism Treatment Awareness Week.

[Filed with Secretary of State June 24, 1996.]

WHEREAS, Autism is a physical disorder of the brain that can cause a lifelong developmental disability; and

WHEREAS, In the United States there are at least 360,000 people with autism, one-third of whom are children; and

WHEREAS, The diagnosis and treatment of autism may require assessment and intervention by a multidisciplinary team of experts; and

WHEREAS, The early intervention behavior analysis program developed over the past 30 years by Dr. Ivar Lovaas at the University of California at Los Angeles has shown that a program of intensive early intervention treatment that focuses on a multidisciplinary approach relying in large part on family and community participation produces a positive outcome; and

WHEREAS, Current research being conducted into the biological causes and treatment regimens for autism are showing great promise and therefore should be encouraged and supported; and

WHEREAS, The lifelong tireless work of dedicated individuals, including Dr. Bernard Rimland, are energizing the medical and behavioral science community to find the cause and cure for autism; and

WHEREAS, Professionals, such as Dr. Ron Huff, a psychologist at Alta California Regional Center, who is a pioneer in the advocation of developing and implementing early intervention services and programs for autistic children as well as a founder of the Families for Early Autism Treatment, FEAT, a grass roots community organization in Sacramento composed of parents and professionals committed to providing effective treatment and teaching programs for autistic children and their families, have dedicated their professional lives to improving the condition of those impacted by this disorder; and

WHEREAS, Additional special education teachers and curriculum for autistic children are needed and would ultimately reduce the risk of institutionalization of autistic children; and

WHEREAS, Parental involvement, community integration, early intervention, increased acceptance of children with special needs, and systematic treatment are all key components that would make a more favorable future likely for children with autism; and

WHEREAS, Heightened awareness and education about autism would help to achieve these components; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims the week of August 4 through August 10, 1996, as Autism Treatment Awareness Week, and acknowledges the contribution made in the area of early autism intervention treatment by experts in the field as well as the families involved; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the State Department of Developmental Services, Area Board III, the State Department of Education, Local Chapters of the Autism Society, Regional Centers, the Association of Regional Center Agencies, Protection and Advocacy, Dr. O. Ivar Lovaas, Dr. Bernard Rimland, Dr. Ron Huff, the California School Boards Association, and the Developmental Disabilities Council.

RESOLUTION CHAPTER 28

Senate Joint Resolution No. 39—Relative to investor visa programs.

[Filed with Secretary of State June 24, 1996.]

WHEREAS, There is a continuing need for economic revitalization in California; and

WHEREAS, Capital investment from new immigrants is a vital aspect of local and statewide economic revitalization; and

WHEREAS, An increasing number of affluent immigrants have the desire to reside in California and to invest their financial resources into business ventures here; and

WHEREAS, The current United States Investor Visa Program inhibits California's ability to attract foreign business investors; and

WHEREAS, The Immigration and Naturalization Service indicates that full enrollment in the investor visa program would generate $1.6 billion of new investment and 20,000 jobs annually in California; and

WHEREAS, In the first two years of implementation, only 825 petitions were filed out of the 10,000 visa available under the United States Investor Visa Program; and

WHEREAS, Other countries, such as Canada have tailored their investor visa programs to attract significant capital investment; and

WHEREAS, The California Policy Seminar Brief, Volume 7, Number 13, reported that Canada has attracted over $3 billion in investment through their Business Migration Program between 1986 and 1990; and

WHEREAS, Immigrant business investment in Canada resulted in a 39 percent increase in employment in the manufacturing firms that were invested in; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to reduce the current investment threshold under the United States Investor Visa Program to five hundred thousand dollars ($500,000) minimum investment and five employees to allow states greater flexibility in focusing investment funds to address specific economic needs; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Director of the United States Immigration and Naturalization Service.

RESOLUTION CHAPTER 29

Assembly Joint Resolution No. 55—Relative to drugs and biologics.

[Filed with Secretary of State June 24, 1996.]

WHEREAS, Improving patient access to safe, effective, quality health care is a paramount national goal; and

WHEREAS, The key to improved health care, especially for persons with serious unmet medical needs, is the rapid approval of safe and effective new drugs, biological products, and medical devices, and the approval of new uses for existing drugs ; and

WHEREAS, Minimizing the delay between discovery and eventual approval of a new drug, biological product, or medial device, or new use of an existing drug, derived from research conducted by innovative pharmaceutical and biotechnology companies could improve the lives of millions of Americans; and

WHEREAS, Current limitations on the dissemination of information about pharmaceutical products reduce the availability of information to physicians, other health care professionals, and patients; and

WHEREAS, The current rules and practices governing the review of new drugs, biological products, and medical devices, and new uses of existing drugs, by the United States Food and Drug Administration can delay approvals in some cases and are unnecessarily expensive; and

WHEREAS, Although a recent federal General Accounting Office analysis of the new drug application process of the Food and Drug Administration found that the Food and Drug Administration has succeeded in reducing the average number of months for new drug approval, in many cases, further reductions will be in the public interest; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress and the President of the United States to enact comprehensive legislation to facilitate further the rapid review and approval of innovative new drugs, biological products, and medical devices, and new uses of existing drugs, without compromising patient safety or product effectiveness; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, and to the Speaker of the House of Representatives, the President of the Senate, and each Member in the Congress of the United States.

RESOLUTION CHAPTER 30

Assembly Joint Resolution No. 60—Relative to reauthorization of the federal Safe Drinking Water Act.

[Filed with Secretary of State July 2, 1996.]

WHEREAS, Water is California's most precious natural resource; and

WHEREAS, California has historically worked actively to provide safe drinking water to the people of the state; and

WHEREAS, The federal Safe Drinking Water Act regulates all small and large water systems in the United States, including California; and

WHEREAS, The state and local governments may be delegated primacy for enforcing the federal Safe Drinking Water Act within their jurisdictions; and

WHEREAS, California has worked cooperatively to implement and enforce the provisions of the federal Safe Drinking Water Act, to the great benefit of the people of the state; and

WHEREAS, The federal Safe Drinking Water Act is important to the welfare of the people of California; and

WHEREAS, There is a need to amend the federal Safe Drinking Water Act to better differentiate compliance measures and procedures applicable to small water systems from those applicable to large systems, without sacrificing the protection of public health; and

WHEREAS, The United States Congress is currently considering legislation to reauthorize the federal Safe Drinking Water Act; and

WHEREAS, There is a need, and strong bipartisan support, for provisions that allow state and local health officials to focus resources on those local issues that will have the greatest overall impact on water quality improvement and public health, provide administrative flexibility that is needed at the local level and would assist state and local government officials in California in administering the federal Safe Drinking Water Act, and give assistance to thousands of small community-based systems that are currently struggling to meet water supply and quality challenges; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes Congress and the President of the United States to pass forthwith legislation to reauthorize the federal Safe Drinking Water Act with provisions that define and recognize the needs of small water systems, provide states the flexibility by which to tailor monitoring requirements to meet local needs, authorize affordable compliance alternatives, facilitate compliance, recognize the states as the primary enforcement authorities, and allow for adequate compliance time; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to each Senator and Representative from California in the Congress

of the United States, and to the author for other appropriate distribution.

RESOLUTION CHAPTER 31

Senate Joint Resolution No. 37—Relative to veterans' home loan programs.

[Filed with Secretary of State July 2, 1996.]

WHEREAS, The States of Alaska, California, Oregon, Texas, and Wisconsin have established veterans' home loan programs; and

WHEREAS, The States of Alaska, California, Oregon, Texas, and Wisconsin have authority in the Internal Revenue Code to issue qualified veteran mortgage bonds to finance their respective veteran home loan programs; and

WHEREAS, Veterans' eligibility under current federal tax law restricts the eligibility to veterans who served on active duty prior to January 1, 1977; and

WHEREAS, The Directors of Veterans Affairs of the States of Alaska, California, Oregon, Texas, and Wisconsin are desirous of extending their respective veteran home loan programs to include the men and women of the United States of America who are dispatched to participate in any conflict that occurred or occurs on or after January 1, 1977; and

WHEREAS, Veterans of these aforementioned conflicts should receive benefits consistent with the benefits available to veterans of previous armed conflicts; and

WHEREAS, Those veterans have been qualified for eligibility into congressionally chartered veterans' organizations by prior acts of the Congress of the United States; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress and the President of the United States to urge the Congress of the United States to amend paragraph (4) of Section 143(*l*) of the Internal Revenue Code of 1986 to read: "Qualified veteran—For the purpose of this subsection, the term 'qualified veteran' means any veteran who meets such requirements as may be imposed by the state law pursuant to which qualified veterans' mortgage bonds are issued"; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, and to the Speaker of the House of Representatives, the President of the Senate, and each Member in the Congress of the United States.

RESOLUTION CHAPTER 32

Senate Concurrent Resolution No. 50—Relative to food products.

[Filed with Secretary of State July 5, 1996.]

WHEREAS, California's economy has suffered from a prolonged recession, exacerbated by base closures and natural disasters; and

WHEREAS, California agriculture has been a bright light for the state's economy, growing to a $20.1 billion industry that generates more than $70 billion in related economic activity; and

WHEREAS, Agriculture supports nearly 10 percent of all jobs in California; and

WHEREAS, Farmers and ranchers in California produce an abundant supply of safe, nutritious food products at reasonable prices; and

WHEREAS, Annual food purchases by the State of California totaled nearly $84.6 million in the 1994–95 fiscal year; and

WHEREAS, Public Law 100-237, enacted January 8, 1988, requires school authorities that receive federal funds to purchase, whenever possible, only food products that are produced in the United States; and

WHEREAS, California grown and processed foods comply with very specific, highly protective federal and state sanitation and safety standards; and

WHEREAS, It is appropriate to support local economies and the jobs dependent upon them; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That when making purchasing decisions, tax supported school districts in this state are encouraged to develop a policy that examines the price of domestic food products prior to examining the price of nondomestic food products, in order to be consistent with Public Law 100-237; and be it further

Resolved, That it is also appropriate to encourage other tax supported public institutions to develop a policy of examining the price of domestic food products prior to examining the price of nondomestic food products in making purchasing decisions; and be it further

Resolved, That when it is economically feasible to do so, tax supported state institutions are encouraged to buy California food products.

RESOLUTION CHAPTER 33

Senate Concurrent Resolution No. 54—Relative to a sister-state relationship.

[Filed with Secretary of State July 5, 1996.]

WHEREAS, The sister city-state concept was inaugurated by the President of the United States in 1956 and this program has resulted in greater friendship and understanding between the people of the United States and other nations through direct contact; and

WHEREAS, We live in an interconnected world with a global economy, so that international friendship and cultural understanding are increasingly important; and

WHEREAS, California and the Province of Chung Chong Nam Do, Republic of Korea, have much in common, including geographic features, strong educational focus, diverse industry and economy, and a strong tourism industry; and

WHEREAS, Chung Chong Nam Do Province is located in the center of the Republic of Korea with western coastal lines; and

WHEREAS, There are 38 higher educational institutions, of which 30 are universities, reflecting the commitment to education of Chung Chong Nam Do Province; and

WHEREAS, The people of the region are educated at a high level, and are capable of adjusting to new skills and performing highly skilled work; and

WHEREAS, Chung Chong Nam Do Province's economy is based on agriculture, forestry, fishing, and manufacturing in machinery, chemicals, textiles, electronics, and computers; and

WHEREAS, The region's historical cultural relics, beaches, hot springs, and beautiful scenery provide rich resources for tourism; and

WHEREAS, A sister-state relationship with California would promote international trade, commerce, and tourism, increase the potential for commercial relationships, and foster cultural and educational exchanges; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California, on behalf of the people of the State of California, extend to the people of the Chung Chong Nam Do Province, Republic of Korea, through the Governor of Chung Chong Nam Do Province, an invitation to join the State of California as a sister state; and be it further

Resolved, That the Legislature encourages the Trade and Commerce Agency and the Department and Food and Agriculture to assist in implementing programs and activities to promote mutual trade and commerce; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor, the Secretary of Trade and Commerce, the Secretary of Food and Agriculture, and the Governor of Chung Chong Nam Do Province, Republic of Korea.

RESOLUTION CHAPTER 34

Senate Constitutional Amendment No. 18—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 8 and 11 of Article II thereof, and by adding Section 8.5 to Article IV thereof, and Section 7.5 to Article XI thereof, relating to ballot measures.

[Filed with Secretary of State July 9, 1996.]

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1995–96 Regular Session commencing on the fifth day of December 1994, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 8 of Article II is amended by adding subdivisions (e) and (f), to read:

(e) An initiative measure shall not include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the initiative measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of that political subdivision.

(f) An initiative measure shall not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

Second—That Section 11 of Article II is amended to read:

SEC. 11. (a) Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide. Except as provided in subdivisions (b) and (c), this section does not affect a city having a charter.

(b) A city or county initiative measure shall not include or exclude any part of the city or county from the application or effect of its provisions based upon approval or disapproval of the initiative measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of the city or county or any part thereof.

(c) A city or county initiative measure shall not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

Third—That Section 8.5 is added to Article IV, to read:

SEC. 8.5. An act amending an initiative statute, an act providing for the issuance of bonds, or a constitutional amendment proposed by the Legislature and submitted to the voters for approval shall not do either of the following:

(a) Include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of that political subdivision.

(b) Contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

Fourth—That Section 7.5 is added to Article XI, to read:

SEC. 7.5. (a) A city or county measure proposed by the legislative body of a city, charter city, county, or charter county and submitted to the voters for approval shall not do either of the following:

(1) Include or exclude any part of the city, charter city, county, or charter county from the application or effect of its provisions based upon approval or disapproval of the city or county measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of the city, charter city, county, charter county, or any part thereof.

(2) Contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

(b) "City or county measure," as used in this section, means an advisory question, proposed charter or charter amendment, ordinance, proposition for the issuance of bonds, or other question or proposition submitted to the voters of a city, or to the voters of a county at an election held throughout an entire single county.

RESOLUTION CHAPTER 35

Senate Joint Resolution No. 49—Relative to restructuring of the United States Department of Veterans Affairs.

[Filed with Secretary of State July 11, 1996.]

WHEREAS, California, with 3.3 million veterans, has the largest concentration of veterans in the United States and the number continues to grow as up to 50,000 newly separated service members per year select California as their residence; and

WHEREAS, California has historically been underrepresented by the United States Department of Veterans Affairs (USDVA) in that California has only one USDVA employee for each 8,000 veterans while the rest of the nation averages one USDVA employee for each 6,000 veterans; and

WHEREAS, This inequity means less staff to resolve the more complex claims of the veterans of this state; and

WHEREAS, This inequity is aggravated by the fact that the mix of claims causes California to have a larger compensation share and a smaller pension share than the rest of the nation; and

WHEREAS, Despite this large population of veterans and their families, the proposed USDVA Field Restructuring Plan would transfer veterans' disability pension benefits processing services from California to Phoenix, Arizona and other states; and

WHEREAS, The restructuring proposal will not, under any circumstances, provide a reasonable level of service to California veterans; and

WHEREAS, The transfer of disability pension processing activities from the Los Angeles and Oakland USDVA offices to Phoenix reflects restructuring that is driven by budget concerns, and not by concern for veterans' service; and

WHEREAS, It is estimated that the servicing of disability pension claims for those veterans whose files will not be in Phoenix reduces the case management effectiveness of not only the county veterans service offices but also the national service organizations, the Department of Veterans Affairs, and the Employment Development Department of California, and will have a significant impact on cost-avoiding state Medi-Cal (medicaid) appropriations as they apply to our aging veteran population due to reduced levels of service, timeliness factors, and the required ongoing training that is currently shared by county veterans service officers and the Los Angeles and Oakland regional USDVA offices; and

WHEREAS, It is the understanding of the Legislature that the proposed USDVA Field Restructuring Plan is based on old and unreliable data that attacks California's regional USDVA offices as inefficient and overmanaged and these assumptions are not valid today; and

WHEREAS, Reducing the size of the offices or moving the offices to Phoenix, Arizona or any other state, or otherwise attempting to effectuate the "smaller is better" doctrine in this case will not solve the increasing problems of California's more than 3.3 million veterans and their dependents; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President, the Congress of the United States, and the United States Department of Veterans Affairs to maintain the status quo, and to reconsider the decision to adopt the proposed USDVA Field Restructuring Plan; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States,

and to the Secretary of the United States Department of Veterans Affairs.

RESOLUTION CHAPTER 36

Senate Constitutional Amendment No. 4—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 16 of Article I thereof, and by amending Sections 1, 4, 5, 6, 8, 10, 11, and 16 of, and adding and repealing Section 23 of, Article VI thereof, relating to courts.

[Filed with Secretary of State July 12, 1996.]

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1995–96 Regular Session commencing on the fifth day of December, 1994, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 16 of Article I thereof is amended to read:

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes other than causes within the appellate jurisdiction of the court of appeal the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

Second—That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, and municipal courts, all of which are courts of record.

Third—That Section 4 of Article VI thereof is amended to read:

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

Fourth—That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court districts as provided by statute, but a city may not be divided into more than one district. Each municipal court shall have one or more judges. Each municipal court district shall have no fewer than 40,000 residents; provided that each county shall have at least one municipal court district. The number of residents shall be determined as provided by statute.

(b) On the operative date of this subdivision, all existing justice courts shall become municipal courts, and the number, qualifications, and compensation of judges, officers, attachés, and employees shall continue until changed by the Legislature. Each judge of a part-time municipal court is deemed to have agreed to serve full time and shall be available for assignment by the Chief Justice for the balance of time necessary to comprise a full-time workload.

(c) The Legislature shall provide for the organization and prescribe the jurisdiction of municipal courts. It shall prescribe for each municipal court the number, qualifications, and compensation of judges, officers, and employees.

(d) Notwithstanding subdivision (a), any city in San Diego County may be divided into more than one municipal court district if the Legislature determines that unusual geographic conditions warrant such division.

(e) Notwithstanding subdivision (a), the municipal and superior courts shall be unified upon a majority vote of superior court judges and a majority vote of municipal court judges within the county. In those counties, there shall be only a superior court.

Fifth—That Section 6 of Article VI thereof is amended to read:

SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, 5 judges of municipal courts, 2 nonvoting court administrators, and such other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice for a 3-year term pursuant to procedures established by the council; 4 members of the State Bar appointed by its governing body for 3-year terms; and one member of each house of the Legislature appointed as provided by the house. Vacancies in the memberships on the Judicial Council otherwise designated for municipal court judges shall be filled by judges of the superior court in the case of appointments made when fewer than 10 counties have municipal courts.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

Sixth—That Section 8 of Article VI thereof is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of one judge of a court of appeal, one judge of a superior court, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, each appointed by the governor; and 6 citizens who are not judges, retired judges, or members of the State Bar of California, 2 of whom shall be appointed by the Governor, 2 by the Senate Committee on Rules, and 2 by the Speaker of the Assembly. Except as provided in subdivisions (b) and (c), all terms are for 4 years. No member shall serve more than 2 4-year terms, or for more than a total of 10 years if appointed to fill a vacancy. A vacancy in the membership on the Commission on Judicial Performance otherwise designated for a municipal court judge shall be filled by a judge of the superior court in the case of an appointment made when fewer than 10 counties have municipal courts.

(b) Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power. Appointing powers may appoint members who are already serving on the commission prior to March 1, 1995, to a single 2-year term, but may not appoint them to an additional term thereafter.

(c) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of 2 years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(4) One member appointed by the Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(6) All other members shall be appointed to full 4-year terms commencing March 1, 1995.

Seventh—That Section 10 of Article VI thereof is amended to read:

SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.

Superior courts have original jurisdiction in all other causes except those given by statute to other trial courts.

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

Eighth—That Section 11 of Article VI thereof is amended to read:

SEC. 11. (a) The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute. When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.

(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.

(c) The Legislature may permit courts exercising appellate jurisdiction to take evidence and make findings of fact when jury trial is waived or not a matter of right.

Ninth—That Section 16 of Article VI thereof is amended to read:

SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

(b) (1) In counties in which there is no municipal court, judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(2) In counties in which there is one or more municipal court districts, judges of superior and municipal courts shall be elected in their counties or districts at general elections. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the second January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.

Tenth—That Section 23 is added to Article VI thereof, to read:

SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and 16, of this article, and the amendments to Section 16 of Article I, approved at the November 5, 1996, general election is to permit the Legislature to provide for the abolition of the municipal courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition under, the provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.

(b) When the superior and municipal courts within a county are unified, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges shall become judges of the superior court in that county. The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification.

(c) Except as provided by statute to the contrary, in any county in which the superior and municipal courts become unified, the following shall occur automatically in each preexisting superior and municipal court:

(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

(2) Preexisting court locations are retained as superior court locations.

(3) Preexisting court records become records of the superior court.

(4) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(5) Matters of a type previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.

(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(7) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

Eleventh—That if any provision of this measure or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

RESOLUTION CHAPTER 37

Senate Joint Resolution No. 48—Relative to the North American Free Trade Agreement.

[Filed with Secretary of State July 12, 1996.]

WHEREAS, The Congress and President of the United States ratified and signed the North American Free Trade Agreement (NAFTA); and

WHEREAS, NAFTA is a sovereign-to-sovereign accord that took effect on January 1, 1994; and

WHEREAS, NAFTA has benefited, and continues to benefit, every state in the nation with import and export trade that has increased national employment, offset trade deficits, and expanded commercial activity; and

WHEREAS, California and the other border states are required to address NAFTA-related infrastructure needs in the border region and serve as the nation's first line of defense against unsafe and undocumented commercial vehicles and operators; and

WHEREAS, The President and Congress have provided no federal assistance to California for critically needed border infrastructure; and

WHEREAS, The State of California has already spent twenty-five million dollars ($25,000,000) for two commercial vehicle enforcement facilities and remains ready to inspect commercial vehicles from Mexico; and

WHEREAS, The state is faced with diverting from other critical spending demands more than two hundred million dollars ($200,000,000) for highway facilities in the border region; and

WHEREAS, Because the standard percentage for federal-state cost sharing for similar projects is 80 percent federal funding and 20 percent state funding, standard federal reimbursement would be twenty million dollars ($20,000,000) for the commerical vehicle enforcement facilities and one hundred sixty million dollars ($160,000,000) for the highway facilities; now, therefore, be it

Resolved, by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California memorializes the President and the Congress to recognize the

unfunded mandate placed on the border states by the implementation of NAFTA; and be it further

Resolved, That the Legislature of the State of California further memorializes the President, congressional leadership, and the members of California's congressional delegation, to speedily adopt legislation that would provide direct financial assistance to border states specifically for the purpose of improving border infrastructure needed to accommodate the demands of NAFTA; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 38

Senate Concurrent Resolution No. 43—Relative to the California Law Revision Commission.

[Filed with Secretary of State July 12, 1996.]

WHEREAS, The California Law Revision Commission is authorized to study only topics set forth in the calendar contained in its report to the Governor and the Legislature that are thereafter approved for study by concurrent resolution of the Legislature, and topics that have been referred to the commission for study by concurrent resolution of the Legislature; and

WHEREAS, The commission, in its annual report covering its activities for 1995, lists 24 topics, all of which the Legislature has previously authorized or directed the commission to study; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature approves for continued study by the California Law Revision Commission the topics listed below, all of which the Legislature has previously authorized or directed the commission to study:

(1) Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised.

(2) Whether the California Probate Code should be revised, including, but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code.

(3) Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon assignment, subletting, termination, or abandonment of a lease, powers of appointment, and related matters) should be revised.

(4) Whether the law relating to family law (including, but not limited to, community property) should be revised.

(5) Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised.

(6) Whether the law relating to class actions should be revised.

(7) Whether the law relating to offers of compromise should be revised.

(8) Whether the law relating to discovery in civil cases should be revised.

(9) Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorneys' fees to the prevailing party.

(10) Whether acts governing special assessments for public improvements should be simplified and unified.

(11) Whether the law on injunctions and related matters should be revised.

(12) Whether the law relating to the rights and disabilities of minor and incompetent persons should be revised.

(13) Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised.

(14) Whether the Evidence Code should be revised.

(15) Whether the law relating to arbitration should be revised.

(16) Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised.

(17) Whether there should be changes to administrative law.

(18) Whether the law relating to the payment and the shifting of attorneys' fees between litigants should be revised.

(19) Whether the law relating to the adjudication of child and family civil proceedings should be revised.

(20) Whether the Uniform Unincorporated Nonprofit Association Act, or parts of the Uniform Act, and related matters should be adopted in California.

(21) Whether the law governing unfair competition litigation under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code should be revised to clarify the scope of the chapter and to resolve procedural problems in litigation under the chapter, including the res judicata and collateral estoppel effect on the public of a judgment between the parties to the litigation, and related matters.

(22) Whether the requirement of paragraph (2) of subdivision (b) of Section 800 of the Corporations Code that the plaintiff in a shareholder's derivative action must allege the plaintiff's efforts to secure board action or the reasons for not making the effort, and the standard under Section 309 of the Corporations Code for protection of a director from liability for a good faith business judgment, and related matters, should be revised.

(23) Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification.

(24) Whether Section 351 of the Code of Civil Procedure, relating to tolling statutes of limitations while the defendant is out of state, and related matters should be revised; and be it further

Resolved, That the Legislature refers to the California Law Revision Commission for study the new topics listed below:

(1) Whether the California law of contracts, including the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters, should be revised.

(2) Whether the laws within various codes relating to environmental quality and natural resources should be reorganized in order to simplify and consolidate relevant statutes, resolve inconsistencies between the statutes, and eliminate obsolete and unnecessarily duplicative statutes; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the California Law Revision Commission.

RESOLUTION CHAPTER 39

Senate Concurrent Resolution No. 46—Relative to Domestic Violence Awareness Month.

[Filed with Secretary of State July 12, 1996.]

WHEREAS, Home should be a place of warmth, unconditional love, tranquility, and security; however, for many Americans, home is tainted with violence and fear; and

WHEREAS, Domestic violence is more than the occasional family dispute; and

WHEREAS, According to the United States Department of Health and Human Services, domestic violence is the single largest cause of injury to American women, affecting six million women of all racial, cultural, and economic backgrounds; and

WHEREAS, According to data published in 1993 by the Commonwealth Fund and a 1994 survey report by the United States Department of Justice, in the United States, a woman is battered every 15 seconds; 40 percent of female homicide victims in 1991 were killed by their husbands or boyfriends; and

WHEREAS, According to the United States Department of Labor, one million people are assaulted and injured every year as a result of workplace violence, 1,000 people are killed every year due to workplace violence, and 20 percent of battered women lose their jobs due to harrassment at work by abusive husbands or boyfriends; and

WHEREAS, More than one-half of the number of women in need of shelter from an abusive environment may be turned away from a shelter due to lack of space; and

WHEREAS, Women are not the only targets of domestic violence; young children, elderly persons, and men are also victims in their own homes; and

WHEREAS, Emotional scars are often permanent; and

WHEREAS, A coalition of organizations has emerged to confront this crisis directly. Law enforcement agencies, domestic violence hotlines, battered women and children's shelters, health care providers, churches, and the volunteers that serve those entities are helping the effort to end domestic violence; and

WHEREAS, It is important to recognize the compassion and dedication of the individuals involved in that effort, applaud their commitment, and increase public understanding of this significant problem; and

WHEREAS, The first Day of Unity was celebrated in October 1981 and was sponsored by the National Coalition Against Domestic Violence (N.C.A.D.V.) for the purpose of uniting battered women's advocates across the nation in an effort to end domestic violence; and

WHEREAS, That one day has grown into a month of activities at all levels of government, aimed at creating awareness about the problem and presenting solutions; and

WHEREAS, The first Domestic Violence Awareness Month was proclaimed in October 1987; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims the month of October 1996 as Domestic Violence Awareness Month; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the President of the United States, the Governor of the State of California, the Director of the United States Department of

Health and Human Services, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 40

Senate Concurrent Resolution No. 59—Relative to California Neighborhood Watch Month.

[Filed with Secretary of State July 12, 1996.]

WHEREAS, California communities recognize Neighborhood Watch as an effective means for keeping crime out of neighborhoods; and

WHEREAS, Neighbors and law enforcement agencies can work together to create an effective crime-fighting team; and

WHEREAS, Approximately one residential burglary occurs every two minutes in the State of California; and

WHEREAS, The United States Attorney General has warned that juvenile crime arrests will more than double by the year 2010; and

WHEREAS, Much remains to be done to ensure the safety of our homes, our neighborhoods, and our communities for ourselves and our children; and

WHEREAS, The battle against crime will not be won by individuals acting alone; and

WHEREAS, Neighborhood Watch teaches children respect for the law, reinforces community values, and encourages the kind of individual responsibility that makes for healthy, creative neighborhoods populated by safer and happier citizens; and

WHEREAS, Neighborhood Watch programs put neighbors on guard for criminal activity that may occur near their homes, encourage them to report suspicious activity to the police, and provide escorts for elderly or vulnerable citizens; and

WHEREAS, The growth of Neighborhood Watch programs is truly encouraging; and

WHEREAS, Neighborhood Watch programs play a significant role and encompass a broad range of activities in making neighborhoods safe; and

WHEREAS, It is important that the State of California recognize the many contributions of the residents of this state and of law enforcement officers to the success of Neighborhood Watch programs; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature declares the month of August 1996, Neighborhood Watch Month; and be it further

Resolved, That on the occasion of Neighborhood Watch Month, the Governor is hereby requested to address the people of the state to

commend those residents who have participated in Neighborhood Watch programs for their distinguished service to their communities by uniting with their neighbors and law enforcement officers to keep their neighborhoods safe, and to encourage all Californians to join in this effective means of fighting crime in their neighborhoods; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor.

RESOLUTION CHAPTER 41

Assembly Concurrent Resolution No. 47—Relative to the All America City Highway.

[Filed with Secretary of State July 15, 1996.]

WHEREAS, The City of Lindsay was recently awarded "All America City" status by the National Civic League; and

WHEREAS, This designation is a very prestigious honor, as it is awarded to only 10 cities nationwide each year; and

WHEREAS, The Cities of Bakersfield and Porterville were also honored as All America Cities; and

WHEREAS, A unique circumstance exists in that the three All America Cities of Lindsay, Porterville, and Bakersfield are linked in a contiguous manner by a single highway; and

WHEREAS, It is appropriate, therefore, that this unprecedented occurrence be commemorated by naming the section of State Highway Route 65 that links the three cities the All America City Highway; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the section of State Highway Route 65 between State Highway Route 99 and State Highway Route 198 is hereby officially designated the All America City Highway; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing this special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 42

Assembly Concurrent Resolution No. 67—Relative to training in geriatrics and related pharmacology: University of California curricula.

[Filed with Secretary of State July 15, 1996.]

WHEREAS, The lack of adequate training in geriatrics and related pharmacology severely disadvantages physicians in their capability to treat older adults; and

WHEREAS, Many older adults are dying or have become debilitated from adverse drug reactions and many have become addicted to legally prescribed medications; and

WHEREAS, Training in new drug pharmacology is generally entrusted to pharmaceutical companies for whom the profit motive may influence the content and quality of training methods; and

WHEREAS, Demographics project that in the year 2000 people over 65 years of age will comprise 70 percent of all medical practitioners' caseloads; and

WHEREAS, Ongoing research and training in geriatrics and related pharmacology would greatly enhance the ability of physicians to diagnose and treat illness effectively and to utilize preventive health practices that will improve the quality of life for older adults; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California encourages the University of California to continue its efforts to modify the curricula of medical schools in the University of California system to include adequate training in geriatrics and related pharmacology; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President of the University of California.

RESOLUTION CHAPTER 43

Assembly Concurrent Resolution No. 77—Relative to women veterans.

[Filed with Secretary of State July 15, 1996.]

WHEREAS, Historically, 21-year old Deborah Sampson (1760–1827), a trim, blue-eyed, taller-than-average female, dressed herself in a soldier's uniform and entered a Continental Army recruiting office posing as a man, thus becoming the first woman to fight as a uniformed U.S. soldier, being wounded twice; and

WHEREAS, Thereafter Deborah Sampson enlisted, under the name of Robert Surtlieff (her brother's first and middle names), in the 4th Massachusetts Regiment and was a courageous, bold, and fearless soldier; and

WHEREAS, Admission of women to the service academies began in the fall of 1976, the academies provide single-track education, allowing only for minor variations in the cadet program based on physiological differences between men and women. They must remain unmarried until graduation and serve at least five years on active duty; and

WHEREAS, U.S. military service academies graduated their first women officers in May 1980; and

WHEREAS, Grace Hopper (1906–1992) was the first female in the U.S. Armed Forces to rise to the rank of Admiral in the Navy, and was a computer science pioneer and inventor; and

WHEREAS, Aleda E. Lutz graduated in 1937 from the Saginaw General Hospital School of Nursing in Michigan and was commissioned a second lieutenant in 1942 in the newly created Aerial Evacuation Service of the U.S. Army. Lieutenant Lutz volunteered for duty with the 802nd Medical Air Evacuation Squadron, the first of its kind, and had flown 814 hours and was on her 196th mission when her plane crashed; and

WHEREAS, Lieutenant Aleda E. Lutz is believed to be the first woman combat fatality of World War II when her C-47 hospital plane evacuating wounded soldiers in 1944 from Lyon, France, crashed, killing all aboard; and

WHEREAS, During the war, a confiscated cruise liner was converted into a hospital ship and was named the U.S. hospital ship Aleda E. Lutz; and

WHEREAS, The number of women serving in the United States Armed Forces and the number of women veterans continue to increase; and

WHEREAS, Women veterans have contributed greatly to the security of the United States through honorable military service, often involving great hardship and danger; and

WHEREAS, Women now comprise about 12 percent of our active duty armed forces and constitute the fastest growing segment of the veterans population. There are more than 1,200,000 women veterans in the United States representing 4.6 percent of the total veteran population; and

WHEREAS, Although the share of female veterans under 35 years of age (27.7 percent) and the percentage of those 65 and over (22.1 percent) were both noticeably larger than the proportions for similarly aged male veterans (13.3 percent and 16.2 percent, respectively), the median age for all female veterans (52.0 years) at the end of 1990 was almost the same as that for male veterans (52.2 years); and

WHEREAS, African-American female veterans (123,000) represented 11.1 percent of the overall female veteran count. As of 1990, more than one-half of these veterans were under 40 years of age; and

WHEREAS, Female veterans who served only during peacetime accounted for the largest subgroup of former military personnel with 432,000, or 37.2 percent, of the 1990 female veteran population total. This group of female veterans represented more than twice the comparable share (17.9 percent) among males; and

WHEREAS, The 432,000 peacetime-only female veterans consisted of 216,000 ex-service personnel who served exclusively during the post-Vietnam era, 131,000 who participated either only between World War I and World War II or only between World War II and the Korean War, and 85,000 who served only between the Korean War and the Vietnam era. The number of peacetime-only female veterans had increased by 75,000 since 1980, when the total was 357,000; and

WHEREAS, Overall, in 1990 levels of educational attainment for both male and female veterans were fairly equal. More than three-quarters (77.3 percent) of the total female veteran population had graduated from high school. Among male veterans, 73.4 percent had completed high school. College graduates comprised 14.8 percent of the female veteran population as of 1980, a share a little below that (18.7 percent) for male veterans; and

WHEREAS, The number of women veterans will continue to grow as military recruiters increasingly rely on women to staff the armed forces and as the roles and responsibilities of women in the armed forces expand and change in important ways; and

WHEREAS, This year, for example, women are expected to account for a full 20 percent of the Army's enlistees; women have now come aboard the nuclear aircraft carrier Eisenhower (CV-69), the first U.S. warship aboard which women will serve; and in 1994, First Lieutenant Jeanie Flynn became the first woman to train in and pilot an F-15E Strike Eagle, the world's most sophisticated jet fighter; and

WHEREAS, As the roles and responsibilities of women who serve in the armed forces change, so will their need for Veterans Affairs (VA) health care and other services, more women veterans will come to VA care for their service-connected conditions and more women veterans will rely on VA for other veterans benefits and services; and

WHEREAS, As lack of attention to the special needs of women veterans has discouraged or prevented many women veterans from taking full advantage of the benefits and services to which they are entitled; and

WHEREAS, Some health experts are petitioning the U.S. Government to require the Department of Veteran Affairs (DVA) to conduct a follow-up investigation into its earlier findings regarding the high incidence of cancer among women veterans; and

WHEREAS, A joint survey conducted by the Federal DVA and Louis Harris Associates found that women veterans develop cancer at nearly twice the rate of other adult women; and

WHEREAS, There is a need to improve and expand health care services to women veterans by requiring timely access to health services and further expanding the list of standard tests available to women, establishing mammography quality standards, encouraging the inclusion of women in medical research, extending the availability of sexual trauma counseling, and calling for the development of plans to correct deficiencies relating to patient privacy afforded to women veterans; and

WHEREAS, Women in the U.S. Armed Forces (the Army, Navy, Air Forces, Marines, and Coast Guard) are all fully integrated with male personnel. Expansion of military women's programs began in the Department of Defense in the 1973 fiscal year; and

WHEREAS, Although women were precluded from serving in combat positions, policy changes in the Department of Defense have made possible the assignment of women to almost all other career fields; and

WHEREAS, Career progression for women is now comparable to that for male personnel, as women are routinely assigned to overseas locations formerly closed to female personnel. Women are in command of activities and units that have missions other than administration of women; and

WHEREAS, As of June 1993, women made up 11.6 percent of the U.S. Armed Forces. Almost 25 percent of medical and dental specialists were women; of active duty women personnel, fewer than one percent served in the infantry, in gun crews, or aboard ship; and

WHEREAS, The first woman to report for sea duty aboard U.S. Navy noncombatant ships occurred November 1, 1978, and under new rules instituted in 1993, women are allowed to fly combat aircraft and to serve aboard warships. Women are still restricted from service in ground combat units; and

WHEREAS, By early November 1990, the United States had assembled a military force of some 230,000 men and women in the Persian Gulf (roughly half the size of that the U.S. had put into Vietnam in the mid-1960's, a buildup that took several years) in the three-month deployment of Operation Desert Shield; and

WHEREAS, Pursuant to Presidential Executive Order 12744, some 470,000 American men and women of the U.S. Armed Forces were called to service in and around the Arabian Peninsula where they were engaged in combat with the Armed Forces of Iraq, and were at risk of great personal injury and death. More than 11,500 members of the U.S. Military Reserve who were residents of California were called to active duty; and

WHEREAS, As Operation Desert Shield soon relented to Operation Desert Storm in January 1991, and American troops had to adjust to a harsh environment of hot days, and cold nights; a rainy

season in winter; and sand everywhere. They also had to adjust to an unfamiliar Islamic culture and regional customs; and

WHEREAS, Inadvertent slights could blossom into larger problems unless the troops were briefed and understood the conduct required. No alcoholic beverages were permitted. No adult magazines could be brought into the region. Female personnel were instructed not to bare their arms or legs in public, and men and women were instructed not to hold hands in public. Women in a Massachusetts reserve military police battalion were informed that they could appear in Saudi towns out of uniform only if they wore long, black dresses, and walked 12 paces behind any man they accompanied; and

WHEREAS, On many occasions U.S. women in uniform were stopped in the streets by Saudi men, who would engage them in conversation, something they would never do with Saudi women. To the credit of troops and officers alike, the number of negative incidents with Saudis was small. U.S. forces concentrated on training, training, and more training; and

WHEREAS, The American public was surprised by the number of instances in which option active duty and reserve spouses were deployed to the Gulf, often necessitating that they leave their children in the care of others. Operation Desert Shield separated families in ways not frequently experienced in the past conflicts. The American news media devoted considerable coverage to the large number of women in uniform going to the Persian Gulf; and

WHEREAS, Women, in fact, have served in front-line units as aircraft mechanics, nurses, physicians, and helicopter pilots. A few women flew as flight crew in E-3 AWACS aircraft that, although they remained mainly over Saudi territory, could have been high-priority targets for Iraqi fighters; and

WHEREAS, The typical soldier, marine, airman and airwoman, in active duty as well as reserve units, under General H. Norman Schwarzkopf was 27 years of age, six years older than the average in the Vietnam War, and he or she was much more likely to be married and have children than were previous Americans in uniform; and

WHEREAS, One of the oldest Americans serving in the Gulf was Lorain Kuryla, from Chicago, an Air Force reservist who was a personnel officer with the 928th Tactical Airlift Group, and the 63-year old grandmother of five. Twenty years of an all-volunteer military force had created this older, more stable force, the oldest U.S. force to be sent in to the field since the American Civil War (1860–1865); and

WHEREAS, It is appropriate for California to proclaim our respect for the dedication, perseverance, courage, capabilities, and professionalism exhibited by U.S. service women; and

WHEREAS, Designating a week to recognize women veterans will help both to promote important gains made by women veterans and

to focus attention on the special needs of women veterans; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature acknowledges that women veterans are pioneers in nontraditional roles and that women who have served our communities and our state during times of war and peace should be honored on behalf of a grateful state commending their courage, devotion, and spirit; and be it further

Resolved, That the Legislature of the State of California hereby designates the week beginning November 11, 1996, as California Women Veterans Week.

RESOLUTION CHAPTER 44

Senate Concurrent Resolution No. 64—Relative to Joint Rule 51.

[Filed with Secretary of State July 16, 1996.]

Resolved by the Senate of the State of California, the Assembly thereof concurring, That Joint Rule 51 of the Joint Rules of the Senate and Assembly for the 1995–96 Regular Session is amended to read:

Legislative Calendar

51. (a) The Legislature shall observe the following calendar during the first year of the regular session:

(1) Organizational Recess—The Legislature shall meet on the first Monday in December following the general election to organize. Thereafter, each house shall be in recess from such time as it determines, but not later than the following Friday until the first Monday in January, except when the first Monday is January 1 or January 1 is a Sunday, in which case, the following Wednesday.

(2) Easter Recess—The Legislature shall be in recess from the 10th day prior to Easter until the Monday after Easter.

(3) Summer Recess—The Legislature shall be in recess from July 14 until August 14. This recess shall not commence until the Budget Bill is enacted.

(4) Interim Study Recess—The Legislature shall be in recess from September 15 until the first Monday in January, except when the first Monday is January 1 or January 1 is a Sunday, in which case, the following Wednesday.

(b) The Legislature shall observe the following calendar for the remainder of the legislative session:

(1) Easter Recess—The Legislature shall be in recess from the 10th day prior to Easter until the Monday after Easter.

(2) Summer Recess—The Legislature shall be in recess from July 19 until August 5. This recess shall not commence until the Budget Bill is enacted. This paragraph shall apply only to the 1995–96 Regular and Extraordinary Sessions.

(3) Final Recess—The Legislature shall be in recess on September 1 until adjournment sine die on November 30.

(c) Recesses shall be from the hour of adjournment on the day specified to reconvene at the time designated by the respective houses.

(d) The recesses specified by this rule shall be designated as joint recesses.

RESOLUTION CHAPTER 45

Assembly Joint Resolution No. 62—Relative to elderly persons.

[Filed with Secretary of State July 17, 1996.]

WHEREAS, The Older Americans Act (OAA) expired in 1995 and reauthorization proposals are now being considered in Congress; and

WHEREAS, In 1994, OAA programs provided over 240,000,000 meals, 40,000,000 rides, 12,000,000 responses for information and referrals, 1,000,000 care visits, and 1,000,000 legal counseling sessions to older persons who are at risk of losing their independence; and

WHEREAS, In 1995, the OAA celebrated 30 years of funding programs that have effectively reached out to older persons with the greatest social and economic needs; and

WHEREAS, The aging network, comprised of the federal Administration on Aging, state units on aging, area agencies on aging, tribal organizations, local service providers, and older adults, has developed a cost-effective, nationwide system to respond to the diverse needs of older persons; and

WHEREAS, Programs designed for more able older adults must increasingly rely on financial support from local communities, private individuals, families, and corporate sponsors; and

WHEREAS, Seniors deserve to live in the least restrictive environment in maximum independence as active participants in communities that value honor, respect, and justice for the elderly; and

WHEREAS, The number of financially independent, self-reliant elderly Americans continues to grow; and

WHEREAS, The intrastate funding formula recognizes that each state, territory, and local community has a unique demographic composition and related concerns; and

WHEREAS, The Older Americans Act will provide increased flexibility to state and local agencies in providing effective programs for seniors; and

WHEREAS, The number of minority older Americans and their corresponding service needs are rising exponentially; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature hereby memorializes the President and the Congress of the United States to enact legislation that would reauthorize the Older Americans Act with explicit protection for the rights of seniors including legal rights, advocacy, ombudsman, and demonstration programs, including the following policies:

(a) The maintenance of programs that serve the unique needs of special senior populations such as people with disabilities, and those in greatest social and economic need, including African Americans, Latinos, and Hawaiians, and that respect and recognize the sovereignty of Native Americans' tribal councils through targeting set-asides.

(b) Preservation and protection of the senior network and strong, vibrant area agencies on aging, through appropriate demographic targeting in a fair and balanced intrastate funding formula.

(c) Allowance of flexibility for long-term care funding and services with an emphasis on providing home and community-based services such as adult day health care, adult day care, assisted living, residential care for the elderly, Alzheimer's respite care, preventive health care, elder education, transportation, and congregate as well as home-delivered nutritional services.

(d) Establishment of integrated long-term care services with comprehensive care management that maximizes consumer direction and choice of services and providers.

(e) Provision of reasonable and sufficient resources to meet the growing demand for services as the elder population grows.

(f) Designation and funding of the next White House Conference on Aging for the year 2005; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the Unites States, to the Speaker of the House of Representatives, to each Senator and Representative in the California Congressional Delegation, and to the United States Secretary of Health and Human Services.

RESOLUTION CHAPTER 46

Assembly Concurrent Resolution No. 95—Relative to Breastfeeding Awareness Week.

[Filed with Secretary of State July 17, 1996.]

WHEREAS, All available knowledge indicates that human milk optimally enhances the growth, development, and well-being of an infant by providing the best possible nutrition, protecting against numerous infections and allergies, and promoting maternal and infant bonding; and

WHEREAS, A mother derives emotional and physiological benefits by breastfeeding and at the same time she provides her child with the first-class nutrition guaranteed by mother's milk; and

WHEREAS, Breastfeeding has benefits to society through stronger family bonds and decreased health care costs for infants; and

WHEREAS, The incidence and duration of breastfeeding among women in California is significantly lower than the national average and is especially low among economically disadvantaged families; and

WHEREAS, The health care sector should support education of communities about the advantages of breastfeeding and encourage the establishment of needed support systems to facilitate the initiation and continuation of breastfeeding as the normal and preferred infant feeding method; and

WHEREAS, The practice of breastfeeding has diminished due to social and economic pressures, misunderstandings of lactation management, and a decrease in available experienced breastfeeding mothers for help and support; and

WHEREAS, It should be a goal of the state to improve infant and family health by creating a supportive public environment that positively impacts the initiation and duration of breastfeeding; and

WHEREAS, World Breastfeeding Week is celebrated nationally and internationally during the first week of August; and

WHEREAS, The theme for the 1996 World Breastfeeding Week is "Breastfeeding: A Community Responsibility," which acknowledges that many groups and forces in a community can influence a woman's choice about breastfeeding; and

WHEREAS, Communities throughout California, which include families, schools, health providers, businesses, churches, civic groups, clubs, libraries, professional organizations, labor unions, and the government can become involved in creating a supportive and nurturing environment for breastfeeding; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the week of August 1 through 7, 1996, as Breastfeeding Awareness Week, a special time to promote, publicize, and celebrate breastfeeding, to afford an opportunity for the citizens of California to become aware of the many benefits of breastfeeding, and to support breastfeeding as a high priority for healthier babies in the state; and be it further

Resolved, That the Chief of the Assembly transmit a suitably prepared copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 47

Senate Concurrent Resolution No. 65—Relative to school safety.

[Filed with Secretary of State August 9, 1996.]

WHEREAS, The Legislative Analyst's Office has reported in Juvenile Crime: Outlook for California (May 1995) (hereafter LAO Report), that since 1989 the rate of homicides committed by juveniles has significantly exceeded that for adults; and

WHEREAS, The LAO Report also found that between 1985 and 1993 the juvenile arrest rate for violent crimes has increased 53 percent; and

WHEREAS, The LAO Report further concluded that while juveniles in California between 11 and 17 years of age make up 9.3 percent of the state's total population, they account for almost 20 percent of those arrested for homicide; and

WHEREAS, Today some school grounds have become war zones for children; and

WHEREAS, The California Constitution guarantees students and staff the right to be safe and secure on public primary, elementary, junior high, and senior high school campuses; and

WHEREAS, There is a need for violence prevention strategies that effectively deal with individual and cultural relations and that include the collaboration of parents, community members, and law enforcement; and

WHEREAS, School districts, in conjunction with the Senate Subcommittee on School Safety, will continue to strengthen their efforts to reduce and prevent violence through unity, harmony, and collaboration; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature recognizes October 1996 as School Safety Month and the week of January 13 through 17, 1997, as Yellow Ribbon Week; and be it further

Resolved, That the Legislature encourages all schools to participate in appropriate activities during School Safety Month to recognize the importance of conflict resolution and violence eradication; and be it further

Resolved, That the Legislature encourages parents, pupils, teachers, other school personnel, and members of the community to wear yellow ribbons during the week of January 13 through 17, 1997,

to demonstrate their commitment to school safety and in recognition of pupils who have lost their lives as a direct result of school violence.

RESOLUTION CHAPTER 48

Senate Joint Resolution No. 45—Relative to the aircraft carrier U.S.S. Hornet (CV-12).

[Filed with Secretary of State August 12, 1996.]

WHEREAS, Alameda has a long history associated with the U.S. Navy and Naval Air Forces, and Alameda was shaped by the birth of aviation technology and is proudly and inextricably linked to the military's presence; and

WHEREAS, The acquisition of the aircraft carrier Hornet (CV-12) would preserve a vital part of the U.S. military history and its establishment as a museum would be a fitting memorial to Alameda's contributions to U.S. efforts in World War II, the Korean War, and the Vietnam War; and

WHEREAS, In the 18 months of combat during World War II, the aircraft and gunners of the U.S.S. Hornet (CV-12) destroyed 1,410, enemy planes, sank 73 ships, and damaged more than 400 vessels, including the first hits on the Japanese battleship Yamato, which was sunk on April 7, 1945, as it steamed toward Okinawa; and

WHEREAS, The U.S.S. Hornet (CV-12), a 53-year old ESSEX Class carrier is one of eight warships that bore that name, but it was the most decorated of them all, earning a presidential unit citation and seven battle stars in action during World War II, the Korean War, and the Vietnam War; and

WHEREAS, The first U.S. Navy aircraft carrier named "Hornet" was CV-8 (YORKTOWN Class, including: Enterprise/CV-6 and Yorktown/CV-5) laid down in September 1939 by the Newport News Shipbuilding & Drydock Company. It was launched on December 14, 1940, and commissioned on October 20, 1941; it displaced 20,000 tons, measured 761 feet long, and had a complement of 2,200 personnel; and

WHEREAS, The Hornet (CV-8) was designed with the benefit of real operating experience, sharing the basic design principles of a large, open hangar deck topped by a thin, rectangular wood and steel flight deck; and

WHEREAS, On April 2, 1942, the U.S.S. Hornet (CV-8) having just completed its workups, left Alameda with an unusual deckload of 16 Army Air Corps B-25 Mitchell bombers commanded by Lt. Colonel James "Jimmy" Doolittle, sailing to join a task force with Enterprise (CV-6) targeting the Japanese Cities of Tokyo, Nagoya, Yokohama, and Kobe; and

WHEREAS, On April 18, 1942, still some miles to the east of the intended launch point, the ships of the task force were sighted by Japanese picket boats. Faced with the decision whether to abort the mission, push on to the planned launch point against an alerted enemy, or launch immediately with full knowledge that the B-25s lacked the range to reach their intended landing fields in China, "Doolittle's Raiders" launched immediately, and struck the first successful attack upon the homeland of Japan; and

WHEREAS, The Hornet (CV-8) was further involved during World War II in the Central and South Pacific carrying out operations in the Battle of Midway, June 4-6, 1942, and the Battle of Santa Cruz Islands, where it received six Japanese bomb hits, two torpedo hits, and two hits by suicide aircraft, and sank on October 27, 1942; and

WHEREAS, The second U.S. Navy aircraft carrier named "Hornet" was CV-12 (modernized ESSEX Class, including 19 ships), constructed by the Newport News Shipbuilding & Drydock Company, and launched August 29, 1943. The Hornet (CV-12) was commissioned November 29, 1943, it displaced 38,500 tons, measured 889 feet long, carried 45 aircraft, and had a complement of 2,400 personnel; and

WHEREAS, In June, 1945, a typhoon ripped a 24-foot gash in the forward section of the flight deck, but the Hornet (CV-12) was simply turned around and the aircraft were launched off the stern; and

WHEREAS, Postwar modernization of the Hornet (CV-12) under the Fleet Rehabilitation and Modernization program allowed it to be refitted with improved elevators, a reinforced flight deck, increased aviation fuel storage, and other features for operating jet aircraft including modernization of its aircraft arresting system. These refittings increased the Hornets' ability to operate advanced aircraft and to improve antisubmarine capabilities; and

WHEREAS, The aircraft carrier Hornet (CV-12) contributed to U.S. efforts in World War II, the Korean War, and the Vietnam War, and served as the command ship for recovery of the Apollo XI and XII reentry vehicles; and

WHEREAS, The aircraft carrier Hornet (CV-12) was decommissioned on June 26, 1970, and is in good structural condition, and will soon be considered for sale as military surplus; and

WHEREAS, The McDonald Douglas F/A 18 Hornet multiple-role air superiority/ground attack aircraft that has become the fleet's principal carrier-based fixed wing aircraft, was named in honor of the aircraft carrier U.S.S. Hornet; and

WHEREAS, In 1995, the weathered-gray warship was scheduled for demolition despite its 1991 designation as a National Historic Landmark; and

WHEREAS, The decision to demolish the ship outraged former crew members, who recruited approximately 100 volunteers and embarked on a campaign to save the ship; and

WHEREAS, The Aircraft Carrier Hornet Museum is proposed to be permanently berthed in Alameda at Pier No. 2 and to be secured by eight 2-inch chains to existing chain pads welded on the shell, and would immeasureably enhance the maritime ambience of the regional shipyards, the Port of Oakland, and the Alameda Naval Air Station; and

WHEREAS, The Aircraft Carrier Hornet Foundation (ACHF) has arranged to acquire four 110-foot long by 34-foot wide YCs for mooring (that are certified as suitable for use associated with nuclear submarines) from Mare Island Naval Shipyard. This arrangement will provide a 440-foot long parallel load distribution plane from the hull to the fenders of the pier; and

WHEREAS, Use of this system of chain attachment to the pier bollards in conjunction with the four YCs will provide an arrangement of positive mechanical attachment sufficient to secure the ship and withstand 100-year weather requirements; and

WHEREAS, The carrier museum would be an attraction to both domestic and foreign tourists, thereby enhancing the global competitive position of the San Francisco Bay area; and

WHEREAS, According to the Historic Naval Ships Association, a 1994–95 survey shows attendance to similar historic U.S. naval ship museums as follows: battleship Texas (BB-35)—300,000; battleship Arizona (BB-39)—1.5 million; battleship North Carolina (BB-55)—225,000; battleship Massachusetts (BB-59)—140,000; battleship Alabama (BB-60)—245,000; aircraft carrier Intrepid (CV-11)—410,000; aircraft carrier Lexington (CV-16)—340,000; submarine Bowfin (SS-287)—195,000; submarine Pampanito (SS-383)—250,000; 3-masted frigate Constitution—420,000; and

WHEREAS, The added attraction of a carrier museum would result in longer tourist stays, with consequent increases in retail sales, hotel and motel occupancy, and restaurant patronage, resulting in higher sales and transient occupancy tax revenues; and

WHEREAS, Estimates indicate that establishment of the proposed museum and cultural center would employ up to 150 people within three years, and would annually infuse between 12 and 22 million dollars into the local economy; and

WHEREAS, A carrier museum could be used as an ongoing exposition to showcase Alameda's leadership in aerospace and defense technology, to develop educational programs for schoolaged children, and to provide entertainment attractions based on naval aviation history; and

WHEREAS, The presence of a military museum in Alameda would promote positive community relations between the citizens and the military; and

WHEREAS, Support for legislation pending before the 104th Session of the U.S. Congress entitled "The World War II Education and Research Act" would authorize that at least one site per state be

officially designated a National World War II Education and Research Center; and

WHEREAS, The purposes of this Congressional Act are to enable industry, universities, research facilities, presidential libraries, museums, and public and private sector organizations to make available to the public all relevant information on the collective war effort involving the military, industrial, and civilian sectors; and

WHEREAS, The Aircraft Carrier Hornet Foundation intends to raise sufficient resources from various possible sources (donations, pledges, venture capital, and revenue bonds) to pay for all relevant startup costs and to develop a long-range master plan to do all of the following: (1) include a 1940–60's museum in hangar bays 1, 2, and 3, with an emphasis on Pacific theater battles including airplanes and artifacts from that era; (2) incorporate Airwings, Squadrons, Marine Detachments, and Reserve and Veterans Associations called "Bringing the Ship Back to Life"; (3) provide mobile displays and exhibits in hangar bays for large community-sponsored events; and (4) establish Apollo XI and Apollo XII displays; and

WHEREAS, The Alameda Reuse and Redevelopment Association (ARRA), which will be responsible for the base after the Navy leaves in 1997, has indicated its willingness to enter into an interim lease of one of the piers for this purpose, and to adopt a resolution in support of the U.S.S. Hornet renovation project; and

WHEREAS, A group of Alameda citizens have established a nonprofit corporation and a committee, along with the support of the ARRA, the World War II Education and Research Commission, the Mayor and City Council of Oakland, the San Francisco Veteran's Affairs Commission, the City of Vacaville, the Oakland Navy League, the Aircraft Carrier Hornet Foundation, the Historic Naval Ships Association, and the Smithsonian Institution, to pursue the acquisition of the aircraft carrier Hornet (CV-12); now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That in order to enhance the public's awareness of the contributions of the citizens of the State of California and the County of Alameda to military preparedness and, in particular, naval aviation history, and to enhance the region's economy by increasing tourism and creating new employment opportunities, the Legislature of the State of California endorses the efforts to acquire the aircraft carrier U.S.S. Hornet (CV-12) as a permanent museum, educational, and entertainment complex to be located in Alameda; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States, the Secretary of Defense, and the Joint Chiefs of Staff to the Department of Defense, to support the efforts of the citizens of the State of California and the County of Alameda to acquire the aircraft carrier Hornet; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of Defense, and the Joint Chiefs of Staff of the Department of Defense, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 49

Senate Concurrent Resolution No. 51—Relative to the Lake Domenigoni Reservoir.

[Filed with Secretary of State August 12, 1996.]

WHEREAS, The Metropolitan Water District of Southern California is constructing a reservoir in the Domenigoni Valley that is currently known as the "East Side Reservoir"; and

WHEREAS, The district has designated an ad hoc committee to officially name the reservoir; and

WHEREAS, The valley is named after the Domenigoni family; and

WHEREAS, Angelo Domenigoni immigrated to America from Switzerland in 1874 and, with his wife, Domenica, built a successful farming and dairying business, becoming a founding citizen of the area; and

WHEREAS, The fifth generation of Angelo and Domenica Domenigoni's descendants still live and farm in the Domenigoni Valley; and

WHEREAS, The residents of the Domenigoni Valley desire to preserve the heritage of the valley; and

WHEREAS, A project of this scale should acknowledge the history of the valley and the people who have helped to build many of the businesses and institutions in the area, rather than a single person; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby recommends that the reservoir and its features be officially named as follows:

1. The reservoir be named "Lake Domenigoni" in recognition of the historical name for the valley which will be dammed and filled to create the reservoir.

2. The east side and west side recreation areas at the reservoir be named the "Searl Ranch Recreation Area" and the " Garbani Farms Recreation Area," respectively, in recognition of other great farming families that have lived and farmed hundreds of acres in the Domenigoni Valley area.

3. Where the terrain of the reservoir dictates a specific name for a geographic point of interest, such as a cove, peak, point, or bay, the

name recognize the Native American heritage of the area; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Metropolitan Water District of Southern California, Andy and Cindy Domenigoni, and to the author for appropriate further distribution.

RESOLUTION CHAPTER 50

Senate Joint Resolution No. 52—Relative to a Cure Breast Cancer postal stamp donation program.

[Filed with Secretary of State August 19, 1996.]

WHEREAS, Breast cancer is the most common cancer found in women, with one in every eight women likely to develop breast cancer in her lifetime, 183,400 new diagnoses of breast cancer each year, and 46,240 deaths from breast cancer expected in 1996; and

WHEREAS, In the United States, every 15 minutes, five new diagnoses of breast cancer and one death as a result of breast cancer will occur, and worldwide, every 30 seconds, a new diagnosis of breast cancer and a death as a result of breast cancer will occur; and

WHEREAS, The cause or causes of this disease have not been identified and no cure is available at this time, which indicates that more intense research is needed to improve care and treatment and to find a cure for this dreadful disease; and

WHEREAS, Dr. Balazs "Ernie" Bodai, M.D., F.A.C.S., chief of surgery at Kaiser Permanente Medical Center in North Sacramento, contributing his own money and time, has developed a proposal for a voluntary method to raise additional breast cancer research funds; and

WHEREAS, The proposal provides that additional breast cancer research funds would be collected from postal patrons who wish to donate one cent ($0.01) per first-class postage stamp purchased, by requesting a special breast cancer postal stamp and paying one cent ($0.01) more than the rate that would otherwise apply, with the extra one cent ($0.01) going into a special fund called the Cure Breast Cancer (CBC) fund; and

WHEREAS, Dr. Bodai has undertaken an extensive campaign to garner public and private support for the Cure Breast Cancer fund by establishing an organization that is tax exempt for purposes of Section 501(c)(3) of the Internal Revenue Code and ensuring that all administrative costs will be raised separately and all postal donations will go directly into research to find the cause and cure for breast cancer; and

WHEREAS, The Cure Breast Cancer postal stamp donation program has received favorable attention from the media and endorsements from breast cancer organizations, corporations, medical groups, and elected officials, leading to the introduction of federal legislation to enable implementation of the Cure Breast Cancer postal stamp donation program; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature memorialize the Congress and the President to enact the federal legislation that has been introduced in the House of Representatives and Senate to enable the implementation of the Cure Breast Cancer postal stamp donation program and memorialize the Board of Governors of the United States Postal Service to implement this program to allow voluntary collection of supplemental breast cancer research funds; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 51

Senate Joint Resolution No. 54—Relative to resolution of the conflict in Liberia.

[Filed with Secretary of State August 19, 1996.]

WHEREAS, For one hundred and fifty years, Liberia and the United States have maintained a direct and cordial relationship; and

WHEREAS, Liberia, a former member of the League of Nations and founding member of the United Nations, now faces total disintegration; and

WHEREAS, Liberia has been burdened with a brutal civil war for the past six years that has displaced more than one-half of the country's population and claimed the lives of approximately 250,000 Liberians; and

WHEREAS, The brunt of the protracted civil war has been borne by the elderly, women, children, and their relatives living abroad, including in California; and

WHEREAS, A sizable portion of Liberian citizens in the United States reside in the State of California and contribute to the growth of this state and those citizens are individually and collectively impacted by the destruction of their people in Liberia, West Africa; and

WHEREAS, The leadership of Liberia has reneged on more than a dozen signed peace agreements; and

WHEREAS, The citizens of Liberia are being held hostage by the opposing forces resulting in a breakdown of the civil society and the government; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature hereby respectfully memorializes the President and Congress to ameliorate the situation in Liberia and seek a permanent resolution to Liberia's conflict; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 52

Senate Concurrent Resolution No. 58—Relative to state employee merit awards.

[Filed with Secretary of State August 19, 1996.]

WHEREAS, An award of $5,000 has already been made to Karla B. Covington, Department of Corrections, for a proposal resulting in annual savings of $74,283, recommending that a personal computer program be created for the Inmate Transfer Process to replace the manual card file system maintained by each institution, thereby saving approximately 7,000 staff hours annually; and

WHEREAS, An award of $5,000 has already been made to Gregory S. Pochy, Employment Development Department, for a proposal resulting in annual savings of $53,968, recommending the use of a computer system by the Benefit Accounting Group for the reconciliation of Unemployment and Disability Insurance bank accounts and elimination of printing, distribution, and storage of numerous daily and monthly reports, thereby providing substantial savings; and

WHEREAS, An award of $5,000 has already been made to Debra M. Goi, Employment Development Department, for a proposal resulting in net savings of $50,871, recommending that production program compiles be directed to the installed Sysout Archive and Retrieval (SAR) system to allow online access to programming staff and to eliminate the production, distribution, and storage of printed reports, thereby providing substantial savings; and

WHEREAS, An award of $5,000 has already been made to Edward H. McKay, Department of Fish and Game, for a proposal resulting in onetime savings of $202,212 and ongoing savings of $22,500 for a total

savings of $224,712 recommending construction of portable fish screens which would replace permanent screens and be transported between streams to prevent migrant salmon and steelhead from swimming into irrigation canals and small streams where they would eventually perish, thereby providing cost savings due to reduced construction costs of the portable screens and a substantial increase in the number of fish saved per site; and

WHEREAS, An award of $5,000 has already been made to Bonnie L. Grippen, Department of Motor Vehicles, for a proposal resulting in annual savings of $65,896, recommending a formal review of the California State Police probata billings by the Accounting Office when field offices are vacated to ensure charges for this service have been discontinued, thereby identifying excess expenditures and providing substantial savings; and

WHEREAS, An award of $5,000 has already been made to Gregory R. Rowsey, Rodney W. Yung, and Daniel Munoz, Department of Water Resources, for a proposal resulting in annual savings of $75,521, recommending the purchase of an industrial duty copy machine to reproduce 11 inch by 17 inch contract drawings directly from CAD drawings resulting in improved quality and accuracy and a reduction in labor costs and materials; and

WHEREAS, An award of $5,000 has already been made to Michael F. Sheridan and Patrick J. Krych, Department of Transportation, for a proposal resulting in one-time annual savings of $115,430, recommending that new and reconstructed metal beam guard rails be built to replace standard guardrail posts and allow for future raising of rails following pavement rehabilitation, thereby minimizing traffic delays and reducing construction and installation costs; and

WHEREAS, An award of $5,000 has already been made to Norris W. Clark and Robert K. Loo, Department of Insurance, for a proposal resulting in annual savings of $765,496, recommending changes to the Revenue and Taxation Code to amend the filing date, imposition of interest and penalties for retaliatory tax returns to comply with those of the premium tax, thereby resulting in net revenue gain and substantial savings; and

WHEREAS, An award of $5,000 has already been made to Jacalyn L. Collins, Department of General Services, for a proposal resulting in annual savings of $359,307, recommending changes to the procedure for mailing statewide contracts, price schedules, master service agreements and master rental agreements to state agencies, institutions, and universities by the Office of State Printing, which has eliminated unwanted materials being mailed and discarded by the receiving agency, thereby resulting in substantial savings; and

WHEREAS, An award of $5,000 has already been made to Terry A. Werner, Department of General Services, for a proposal resulting in onetime savings of $167,073, recommending a stipulated agreement for settlement of a class action grievance filed by the labor union for

California State Police officers and sergeants for payment of underpaid overtime hours, thereby avoiding expending substantial staff hours to review attendance records for a three-year period and calculate individual payments for 300 employees; and

WHEREAS, An award of $5,000 has already been made to Thomas E. Rietz, Department of Mental Health, for a proposal resulting in annual savings of $75,180, recommending a master service agreement with Mead Data Central to consolidate state use of Lexis/Nexis automated legal research services to obtain a discount for volume use, thereby providing substantial savings; and

WHEREAS, These employees' proposals have resulted in actual savings of $2,027,737; and

WHEREAS, As a result of these savings and increased revenue, it is unnecessary to appropriate additional funds for payment of awards to these employees; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby declares that the following additional awards, authorized by the Department of Personnel Administration, be made to the following named employees:

Karla B. Covington--$2,428
Gregory S. Pochy--$397
Debra M. Goi--$87
Edward H. McKay--$7,360
Bonnie L. Grippen--$1,590
Gregory R. Rowsey--$852
Rodney W. Yung--$852
Daniel Munoz--$852
Michael F. Sheridan--$386
Patrick J. Krych--$386
Norris W. Clark--$35,775
Robert K. Loo--$35,775
Jacalyn L. Collins--30,931
Terry A. Werner--$3,354
Thomas E. Rietz--$2,518; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Controller and the Department of Personnel Administration.

RESOLUTION CHAPTER 53

Assembly Concurrent Resolution No. 84—Relative to overseas trade.

[Filed with Secretary of State August 21, 1996.]

WHEREAS, This state has established overseas trade offices charged with developing the state's exports and promoting job-creating industry investment in the state; and

WHEREAS, The state currently has overseas trade offices located in London, Frankfurt, Mexico City, Taipei, Hong Kong, Tokyo, and Africa, and a representative office in Jerusalem; and

WHEREAS, In the Southeast Asian countries, there has been a dramatic policy shift emphasizing macroeconomic stability, exports, privatization, foreign investment, and infrastructure development; and

WHEREAS, Because of the rising demand for state-of-the-art capital and intermediate goods, technology, services and foreign investment, this state's sophisticated service and technology centered economy stands to do well in exporting its own state-of-the-art goods and services to this rapidly emerging market, and economic growth in this market will also allow California agriculture to benefit through the exportation of a wide variety of products; and

WHEREAS, The state is able to offer some services to support state-owned businesses operating in the principal markets in the East Asian region except for businesses operating in South Korea; and

WHEREAS, South Korea's economic output is greater than that of either Taiwan or Hong Kong and it has become this state's fourth largest export market after Japan, Canada, and Mexico, the bulk of state exports to South Korea are electronics, computers, and industrial machinery, products that are assisting South Korean companies in strengthening their competitive advantages in international markets, and South Korea is the third largest East Asian investor in this state after Japan and Hong Kong; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Director of the California State World Trade Commission is hereby requested to establish an overseas trade office in Southeast Asia, is encouraged to consider locating the office or a satellite office in South Korea, and is requested not to locate the office or a satellite office in the Socialist Republic of Vietnam; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, the Secretary of Trade and Commerce, and the Director of the California State World Trade Commission.

RESOLUTION CHAPTER 54

Senate Constitutional Amendment No. 19—A resolution to propose to the people of the State of California an amendment to the

Constitution of the State, by adding Section 18.1 to Article VI thereof, relating to courts.

[Filed with Secretary of State August 26, 1996.]

Resolved by the Senate, the Assembly concurring. That the Legislature of the State of California at its 1995–96 Regular Session commencing on the fifth day of December, 1994, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended by adding Section 18.1 to Article VI thereof, to read:

SEC. 18.1. The Commission on Judicial Performance shall exercise discretionary jurisdiction with regard to the oversight and discipline of subordinate judicial officers, according to the same standards, and subject to review upon petition to the Supreme Court, as specified in Section 18.

No person who has been found unfit to serve as a subordinate judicial officer after a hearing before the Commission on Judicial Performance shall have the requisite status to serve as a subordinate judicial officer.

This section does not diminish or eliminate the responsibility of a court to exercise initial jurisdiction to discipline or dismiss a subordinate judicial officer as its employee.

RESOLUTION CHAPTER 55

Senate Concurrent Resolution No. 68—Relative to prostate cancer screening.

[Filed with Secretary of State August 26, 1996.]

WHEREAS, One in every eight American men can expect to develop prostate cancer during his lifetime, one every 2.2 minutes, and 668 new cases are diagnosed each day, 75 of which originate in California; and

WHEREAS, Prostate cancer is the most common cancer, and the second most deadly, among men in this state and the nation; and

WHEREAS, California has the highest incidence of, and death rate from, prostate cancer, with 20,000 newly diagnosed cases, a 57-percent increase, and 3,321 deaths, a 4-percent increase, attributable to this terrible disease in 1995; and

WHEREAS, Prostate cancer frequently has no outward symptoms until it has metastasized, and the two inexpensive tests, Digital Rectal Examinations and Prostate-Specific Antigen Tests, that afford early detection, are underutilized; and

WHEREAS, The cure rate for prostate cancer, if detected before metastasis, is 84 percent; and

WHEREAS, The need for prostate cancer research and health care coverage for screening of prostate cancer is advocated by various groups, including, but not limited to, the American Cancer Society, the Matthews Foundation for Prostate Cancer Research and other nonprofit groups, prominent biomedical and pharmaceutical corporations, health care professionals and providers, and prostate cancer support groups; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That all males who reside in the State of California be encouraged to receive annual screening for the early detection of prostate cancer; and be it further

Resolved, That August 20, 1996, is hereby declared California Prostate Cancer Screening Day; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for distribution, as appropriate.

RESOLUTION CHAPTER 56

Senate Concurrent Resolution No. 49—Relative to designated wastes.

[Filed with Secretary of State August 29, 1996.]

WHEREAS, Tons of soils and materials are generated in California each day through normal industrial operations and maintenance activity; and

WHEREAS, Soils and materials that are contaminated and determined to be hazardous are handled, treated, and disposed of as hazardous waste; and

WHEREAS, Nonhazardous soils and materials may be used onsite without negative environmental consequence depending on the concentration of pollutants and the type of reuse; and

WHEREAS, The reuse of these soils and materials onsite minimizes the amount sent to landfills in the state; and

WHEREAS, Certain nonhazardous soils and materials that contain pollutants that could reasonably be expected to affect the beneficial uses of waters of the state are considered to be "designated waste," as defined in Section 13173 of the Water Code, and are regulated by California regional water quality control boards so that those soils and materials will not adversely affect groundwater; and

WHEREAS, The State Water Resources Control Board is authorized, pursuant to Section 13173.2 of the Water Code, to adopt policies that provide a means by which a California regional water quality control board can identify designated waste and the waters of the state that the waste may potentially impact; and

WHEREAS, The State Water Resources Control Board has not yet adopted those policies and California regional water quality control boards and the regulated community need guidance regarding allowable handling of excavated soils and materials so that the maximum amount of nonhazardous materials may be used onsite and not required to be shipped to offsite treatment or disposal facilities; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the State Water Resources Control Board is requested to expeditiously implement Section 13173.2 of the Water Code and undertake a review of state policies that provide a means by which California regional water quality boards and the regulated community can more consistently and accurately identify designated waste; and be it further

Resolved, That the State Water Resources Control Board is requested, in implementing Section 13173.2 of the Water Code, to identify test methods that accurately reflect conditions at industrial sites and consider handling options appropriate for reuse of designated waste at industrial sites; and be it further

Resolved, That the Legislature encourages the maximum practical use of those nonhazardous soils and materials onsite as a means of waste minimization; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the State Water Resources Control Board.

RESOLUTION CHAPTER 57

Senate Concurrent Resolution No. 53—Relative to Russian-American Veterans' Week.

[Filed with Secretary of State August 29, 1996.]

WHEREAS, The All-American Association of Invalids and Veterans of World War II who Emigrated to the United States from the USSR and East European Countries, with 5,000 members, is among the largest organizations of its kind and is composed of Russian and East European veterans of World War II who fought with the United States Army and other Allied armies in the European theatre against Nazi Germany; and

WHEREAS, These men, Jews, former soldiers and officers of the Soviet Army, fought against fascism at the age of 18 to 20 years and were motivated by the knowledge that the Nazis had condemned them to extermination and, in fact, did kill most of their parents and families; and

WHEREAS, After the war, they came to the United States as refugees and America became their new homeland; and

WHEREAS, Seventeen years ago, the Association of Disabled and World War II Veterans was established and registered in the United States as a not-for-profit organization and united those veterans and disabled soldiers who had emigrated to America; and

WHEREAS, The United States government and its people extended a warm welcome to these war veterans who, with their children and grandchildren, have lived in harmony in the United States for these many years; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the California Legislature hereby proclaims that the week of May 5 through May 11, 1997, be commemorated as Russian-American Veterans' Week; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 58

Assembly Concurrent Resolution No. 61—Relative to the Blue Star Memorial Highway.

[Filed with Secretary of State August 29, 1996.]

WHEREAS, The Blue Star Memorial Highway project was adopted by the National Council of State Garden Clubs, Inc., as a living tribute to the men and women of the nation's armed forces; and

WHEREAS, State Highway Route 254, also known as the Avenue of the Giants, in the County of Humboldt, extends from Interstate Highway Route 101 near the Sylvandale exchange to Interstate Highway Route 101 south of the City of Stafford; and

WHEREAS, The designation of State Highway Route 254 as a Blue Star Memorial Highway is sponsored by the Southern Humboldt Garden Club, Inc., and the California Garden Clubs, Inc., with a marker to be placed at an appropriate location; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That State Highway Route 254 is hereby officially designated a Blue Star Memorial Highway; and be it further

Resolved, That the Department of Transportation is requested to accept as an official marker the marker to be placed by the Southern Humboldt Garden Club, Inc., at an appropriate location on State Highway Route 254; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Director of Transportation, the National Council of State Garden Clubs, Inc., the California Garden Clubs, Inc., and the Southern Humboldt Garden Club, Inc.

RESOLUTION CHAPTER 59

Assembly Concurrent Resolution No. 65—Relative to the California Veterans' Week.

[Filed with Secretary of State August 29, 1996.]

WHEREAS, All Californians are encouraged to remember the great debt of gratitude that we as free Californians owe to our veterans; and

WHEREAS, California has a strong commitment to those who have served their nation during time of war, and many structures and monuments have been erected in observance of the service and great sacrifice of all of California's 3,000,000 veterans; and

WHEREAS, In California there are many veterans service organizations, including, but not limited to, AMVETS, VFW, and DAVE, organizations that represent thousands of veterans throughout the state; and

WHEREAS, California's commitment to its veterans must not wane or be forgotten; and

WHEREAS, It is appropriate that the veterans be commemorated for their heroic efforts in the struggle for Democracy; now, therefore be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California recognizes California veterans for the great service and sacrifices that they have made for our liberty; and be it further

Resolved, That all Californians are encouraged to remember the great debt of gratitude that we as free Californians owe to our veterans; and be it further

Resolved, That the Legislature of the State of California hereby proclaims the 5-day period including, and ending with, November 11, 1996, as "California Veterans' Week" to promote the recognition and appreciation of the great service and sacrifices made by California veterans in order to secure our liberty; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a suitably prepared copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 60

Assembly Concurrent Resolution No. 85—Relative to the Alameda Corridor Project.

[Filed with Secretary of State August 29, 1996.]

WHEREAS, The Alameda Corridor Project, a 20-mile corridor that promises to improve access in and out of San Pedro Bay ports by consolidating the rail lines between the ports and rail yards in downtown Los Angeles and by improving the main roadway, is scheduled for completion in 2001; and

WHEREAS, Federal, state, and local funding is critical to the completion of this project; and

WHEREAS, The project will fortify southern California as a major gateway for international trade, thereby protecting southern California ports from competition from other west coast port cities; and

WHEREAS, It is expected that the current $116 billion in goods that pass through the San Pedro Bay ports will increase to $253 billion in goods by the year 2010; and

WHEREAS, The Alameda Corridor Project will significantly help to move those goods more efficiently through the use of intermodal operation, thereby increasing the volume of goods; and

WHEREAS, This increased volume of goods will impact upon existing freight distribution centers causing a probable demand for additional distribution centers to augment the existing centers; and

WHEREAS, Because of this increased demand, it is prudent to consider other areas within southern California to locate a major, supplemental center for global freight handling, allowing cargo to be shuttled between the ports and staging areas; and

WHEREAS, A possible location for a supplemental distribution center is in the Inland Empire in the vicinity of the east San Bernardino Valley; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Secretary of the Trade and Commerce Agency and the Secretary of the Business, Transportation and Housing Agency, jointly, in consultation with the Southern California Association of Governments and the San Bernardino Associated Governments, is requested to review existing studies and ongoing research, and make recommendations on the feasibility of developing a distribution center in the Inland Empire in the vicinity of the east San Bernardino Valley in order to supplement existing distribution centers operating within the Alameda Corridor Project; and be it further

Resolved, That if additional support staff is needed in order to accomplish the objectives set forth in the preceding clause, funding for that additional staff will be provided by nonstate entities; and be it further

Resolved, That the Secretary of the Trade and Commerce Agency and the Secretary of the Business, Transportation and Housing Agency report to the Legislature on or before July 1, 1997, concerning the recommendations; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Secretary of the Trade and Commerce Agency,

the Secretary of the Business, Transportation and Housing Agency, the Southern California Association of Governments, and the San Bernardino Associated Governments.

RESOLUTION CHAPTER 61

Assembly Concurrent Resolution No. 90—Relative to Code Enforcement Week.

[Filed with Secretary of State August 29, 1996.]

WHEREAS, The California Code Enforcement Corporation is celebrating Code Enforcement Week during the week of September 15 through September 21, 1996; and

WHEREAS, It is the mission of the California Code Enforcement Corporation:

(1) To build and maintain a statewide organization of code enforcement officials who represent cities, counties, state government, and other related agencies;

(2) To foster professional, educational, and ethical standards for all persons employed in or performing duties that relate to or depend upon knowledge of code enforcement procedures and regulations;

(3) To administer periodic and regular training and educational opportunities for its members;

(4) To promote certification of members who meet minimum educational, training and other requirements; and,

(5) To foster mutual support among members and to promote and develop the code enforcement profession; and

WHEREAS, The code enforcement profession plays a vital and integral role in maintaining a high quality of life for Californians by increasing the public's safety, preventing deterioration and blight in all neighborhoods, and protecting property values throughout the state; and

WHEREAS, By calling attention to the purpose of the California Code Enforcement Corporation and the effects the code enforcement profession has on improving the quality of life in our communities, Californians will recognize the code enforcement profession's worthy commitment to the future of our state; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the week of September 15 through September 21, 1996, as Code Enforcement Week and urges all Californians to recognize and support code

enforcement officials statewide for their efforts to improve the quality of life in our state.

RESOLUTION CHAPTER 62

Assembly Concurrent Resolution No. 92—Relative to the Don Clausen Highway.

[Filed with Secretary of State August 29, 1996.]

WHEREAS, In 1992, the State of California completed the 12-mile bypass of Prairie Creek Redwoods State Park and the Redwood National Park on State Highway Route 101 in northern Humboldt and southern Del Norte Counties after 8 years of construction; and

WHEREAS, It is appropriate to name this portion of highway in honor of the person most responsible for its development; and

WHEREAS, Donald H. Clausen served the nation and the State of California and its northcoast for 20 years as a Representative to the United States Congress for the 1st District, from 1963 to 1983, and was a national leader in the development and improvement of transportation systems; and

WHEREAS, As the senior ranking member of the House Public Works and Transportation Committee, Donald H. Clausen authored legislation and enlisted the support from his congressional colleagues and the President of the United States for a one hundred five million dollar ($105,000,000) federal appropriation to provide for the construction of the Redwood National Park Bypass project as a way to enhance travel on State Highway Route 101 and reduce the conflicts between through traffic and park users; and

WHEREAS, Congressman Clausen served as a member of the House Interior and Insular Committee, which oversees the National Parks system; and

WHEREAS, Congressman Clausen was instrumental in the establishment of Redwood National Park Visitor Center near Orick and the Redwood National Park Headquarters in Crescent City; and

WHEREAS, Don Clausen served his nation as a carrier pilot in World War II in the Asiatic-Pacific Theater; and

WHEREAS, Don Clausen served his community as a member of the Board of Supervisors for Del Norte County from 1955 to 1962; and

WHEREAS, Following his career in Congress, Don Clausen served as the Director of Special Programs for the Federal Aviation Administration for seven years; and

WHEREAS, Don Clausen has continued to the present to be actively involved in local, statewide, and national transportation endeavors, serving on many boards and councils, including the California Transportation Foundation Board of Directors, where he

has worked on many programs to honor those responsible for innovative projects and lifetime achievements in the transportation field, and in awarding educational scholarships; and

WHEREAS, It is appropriate that the portion of State Highway Route 101 be named the "Don Clausen Highway" in recognition of his unyielding efforts to achieve the construction of this project, and for his lifetime accomplishments in support of his country, state, and community; now, therefore, be it

Resolved, by the Assembly of the State of California, the Senate thereof concurring, That the Redwood National Park Bypass on State Highway Route 101 is hereby officially designated the Don Clausen Highway; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of erecting the appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing the special designation, and upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 63

Assembly Concurrent Resolution No. 93—Relative to Back to School Immunization Month.

[Filed with Secretary of State August 29, 1996.]

WHEREAS, Existing law governing communicable disease prevention and immunization requires the county health officer of each county to organize and maintain a program to make immunizations available to all persons required to be immunized; and

WHEREAS, Early childhood immunizations are essential to protect the health of California's children and prevent the spread of potentially fatal, contagious childhood diseases such as measles, whooping cough, and meningitis; and

WHEREAS, The 1988-91 measles epidemic in California produced 17,000 cases of measles, resulted in 3,400 hospitalizations, claimed 70 lives, and cost over thirty million dollars ($30,000,000); and

WHEREAS, According to the State Department of Health Services, 30 to 40 percent of California's preschool children are not up to date on immunizations; and

WHEREAS, Children from birth to age two years are at highest risk of contracting vaccine-preventable diseases with serious complications due to underimmunization; and

WHEREAS, California has recognized the importance of immunizations by enacting statutes that require children to be adequately immunized to attend school and licensed child care facilities and these requirements have reduced the risk of disease for the 18 years of age and younger population; and

WHEREAS, A large portion of infants and preschool age children remain unprotected; and

WHEREAS, The Governor as part of his immunization initiative provided that three million five hundred thousand dollars ($3,500,000) be appropriated for immunization tracking systems in the 1995-96 fiscal year budget; and

WHEREAS, California and the federal government have appropriated funds to assure that vaccines are available to immunize children whenever necessary; and

WHEREAS, Many health care providers' medical records are incomplete, many parents are unaware that their children are not adequately immunized, and many parents seek immunizations for their children from multiple providers resulting in difficulty complying with sound immunization practices; and

WHEREAS, Overimmunization due to incomplete vaccination records is medically undesirable and costly; and

WHEREAS, Unnecessary costs are associated with poor medical and vaccine inventory recordkeeping; and

WHEREAS, Timely immunizations save fourteen dollars ($14) in the medical and public health intervention of disease outbreaks for every dollar spent providing immunizations and timely immunizations are documented as one of the most cost-effective components of preventive medical care; and

WHEREAS, When parents and children are preparing for the upcoming school year, it is an opportune time to increase the awareness of parents and health providers of the critical need to have children appropriately immunized against contagious diseases such as measles, whooping cough, and meningitis; and

WHEREAS, In light of all of the findings set forth above, it is the intent of the Legislature to help more young children to receive immunizations in a timely manner through the utilization of immunization information and reminder systems; now, therefore be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the month of August 1996 as Back to School Immunization Month; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President of the United States, to the Governor, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 64

Assembly Joint Resolution No. 49—Relative to the reimbursement of the State of California for moneys actually expended in aid of the Government of the United States during the Civil War.

[Filed with Secretary of State August 29, 1996.]

WHEREAS, The State of California has not been reimbursed for moneys actually expended by the state for costs, charges, and expenses incurred in enrolling, equipping, transporting, and paying its volunteer troops during the Civil War in response to the urgent calls of, and under proper requisitions made by, the commanding general of the military department of the Pacific under direct authority of the President and the Secretary of War, upon the understanding that all of these costs, charges, and expenses actually incurred in raising troops for the United States would be reimbursed to the state, as shown by the letter from the former Secretary of State, Honorable William H. Seward, addressed to the Governor of California, dated October 14, 1861, wherein he stated:

"The President has directed me to invite your consideration to the subject of the improvement and perfection of the defenses of the State over which you preside and to ask you to submit the subject to the consideration of the legislature when it shall have assembled. Such proceedings by the State would require only a temporary use of its means. The expenditures ought to be made the subject of conference with the federal authorities. Being thus made with the concurrence of the Government for general defense, there is every reason to believe that Congress would sanction what the State should do and would provide for its reimbursement"; and

WHEREAS, The record shows that the expenditures by the State of California on behalf of the United States were made with the knowledge, cooperation, and approval of the commanding general of the department of the Pacific representing the federal authorities; and

WHEREAS, The expenditures made by the State of California for, and on account of the United States and at its most urgent calls, are set forth by the Comptroller General of the United States under date of August 14, 1930, in pursuance of a resolution of the Senate passed May 28, 1930, as follows:

Grand total sum actually expended by and not repaid to the State of California on July 1, 1889, stated in the account set forth in the report of the Secretary of War made in pursuance of resolution of the Senate of Feb. 27,1889, printed in S.Ex. Doc. No. 11, 51st Cong., 1st sess	$4,420,891.16
Plus interest certified by the treasurer of the State of California as actually paid by said State on the sums so advanced and expended from July 1, 1889, to Dec. 31, 1929, $571,104.17 interest on moneys borrowed through the sale of State bonds issued under authority of the act of the Legislature of the State of California of Apr. 27, 1863; and $1,470,150 interest on moneys similarly borrowed to carry out the provisions of the act of the legislature of said State of Apr. 4, 1864	2,041,254.17
Balance due the State of California	6,462,145.35

(S. Doc. No. 220, 71St Cong;, 3d scss.)

; and

WHEREAS, No part of the sum actually expended for the benefit of the United States and at its request has been reimbursed to the State of California, although the costs, charges, and expenses, including interest, incurred by other states in aid of the government during the Civil War have been paid to those states; and

WHEREAS, The validity, equity, and justness of these expenditures made by the State of California in aid of the federal government in times of great stress have often been admitted and never successfully disputed; and

WHEREAS, The Senate, after thorough investigation, has repeatedly passed bills providing for reimbursement to the State of California, and the committees of the House of Representatives have likewise favorably reported bills for reimbursement; and

WHEREAS, The Seventieth Congress, after many years of consideration, passed, and the President approved, an act providing for the reimbursement to the State of Nevada for costs, charges, and expenses incurred in aid of the government during the Civil War identical in character and authorized under exactly similar circumstances as were the expenditures made by the State of California, thus recognizing the validity and merit of these expenditures; and

WHEREAS, The Assembly, in Assembly Joint Resolution No. 4 of the 1934 Legislative Session, petitioned the federal government for reimbursement of moneys expended during the Civil War; and

WHEREAS, That request, the first unfunded federal mandate, is still unfunded after more than 60 years; and

WHEREAS, The Legislature now reiterates its request to be reimbursed for those moneys; and

WHEREAS, Today, based on 41 years of additional interest, compounded at 6 percent annually, the state could claim more than $81.7 million from the federal government; and

WHEREAS, California's legal pursuit of reimbursement ended on March 2, 1954, when the U.S. Court of Claims rejected all but $8,985.15 of the state claim for $7,561,508.15. The claim included payments and interest on $2.3 million in State Funded Debt Bonds issued by the state in 1873. These bonds refinanced $668,570.86 in state bonds issued in 1863-64 to raise and maintain troops; and

WHEREAS, The State of California has been so long deprived of its rights respecting these expenditures upon part of which it is still paying interest, and since the state is now in such urgent need of the sum due from the United States, if this obligation is again brought to Congress' attention, Congress is likely to appreciate the justice of the state's request for reimbursement at this time in order that, upon repayment, the funds may be used to establish a California Military Museum dedicated to California's veterans. The moneys received, if paid in full with interest, will be sufficient to acquire a building, security, exhibit fabrication, research library, photo archives, artifact conservation facilities, and an endowment fund for staffing costs of the museum; now therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact legislation providing for the reimbursement to the State of California for moneys expended during the Civil War; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, to the President and Vice President of the United States, to the Secretary of Defense, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 65

Assembly Joint Resolution No. 63—Relative to Jewish War Veterans of the United States of America.

[Filed with Secretary of State August 29, 1996.]

WHEREAS, The Jewish War Veterans of the United States of America, an organization of patriotic Americans dedicated to

highlighting the role of Jews in the United States Armed Forces, celebrated 100 years of patriotic service to the nation on March 15, 1996; and

WHEREAS, Thousands of Jews have proudly served the nation in times of war; and

WHEREAS, Thousands of Jews have died in combat while serving in the United States Armed Forces; and

WHEREAS, In World War II alone, Jews received more than 52,000 awards for outstanding service, including the Medal of Honor, the Air Medal, the Silver Star, and the Purple Heart; and

WHEREAS, In the Second World War, over 11,000 Jews died in combat while serving in the United States Armed Forces; and

WHEREAS, Members of the Jewish War Veterans of the United States of America have volunteered over 10,000,000 hours of service at veterans' hospitals; and

WHEREAS, Honoring the sacrifices of Jewish veterans is an important part of recognizing the strong and patriotic role Jews have played in the United States Armed Forces; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President, the Congress of the United States, and the Citizens' Advisory Committee of the United States Postal Service, to take all steps necessary to secure the issuance of a postage stamp in honor of the Jewish War Veterans of the United States of America; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Citizens' Advisory Committee of the United States Postal Service.

RESOLUTION CHAPTER 66

Assembly Joint Resolution No. 68—Relative to veterans' hospitals.

[Filed with Secretary of State August 29, 1996.]

WHEREAS, California has suffered the largest closure of military facilities in the history of this country; and

WHEREAS, The elimination of these facilities reduces to zero the number of hospitals military retirees in adjacent communities may rely on; and

WHEREAS, Many of the 190,000 military retirees in California settled in the adjacent community primarily to take advantage of a military hospital in a now or soon-to-be-closed military facility; and

WHEREAS, There are excellent United States Department of Veterans Affairs (USDVA) hospitals within California in reasonable proximity to communities adjacent to former military facilities, including, but not limited to, the Jerry Pettis USDVA Hospital in Redlands, California; and

WHEREAS, The possibility exists that many of these military retirees, who live adjacent to former military facilities, could be within the adjacent catchment areas of a USDVA hospital; and

WHEREAS, The USDVA and the United States Air Force have entered into a working agreement to jointly utilize the hospital at Nellis Air Force Base, Las Vegas, Nevada, that is known as the Nellis Federal Hospital; and

WHEREAS, It is proposed to establish working agreements to provide for the use of USDVA hospitals by retired military persons and their dependents in California; and

WHEREAS, It is considered to be economical and advantageous for the federal government and for the State of California to enter into those agreements; now therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes, and strongly urges the President and the Congress to consider a joint use of USDVA hospitals, that would greatly benefit those who served this great country and whose life savings were invested in homes adjacent to military facilities for the purpose of receiving hospital services while in their golden years; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Secretary of Defense of the United States, and to the Secretary of the United States Department of Veteran Affairs.

RESOLUTION CHAPTER 67

Senate Concurrent Resolution No. 70—Relative to Joint Rule 61.

[Filed with Secretary of State September 6, 1996.]

Resolved by the Senate of the State of California, the Assembly thereof concurring, That Joint Rule 61 of the Joint Rules of the Senate and Assembly for the 1995–96 Regular Session is amended to read:

Deadlines

61. The following deadlines shall be observed by the Senate and Assembly. After each deadline, the Secretary of the Senate and the Chief Clerk of the Assembly shall not accept committee reports from their respective committees except as otherwise provided in this rule:

(a) Odd-numbered year:

(1) Feb. 24—Last day for bills to be introduced.
(2) April 21—Last day for policy committees to hear and report to fiscal committees fiscal bills introduced in their house.
(3) May 12—Last day for policy committees to hear and report to the floor nonfiscal bills introduced in their house.
(4) May 19—Last day for policy committees to meet prior to June 5.
(5) May 26—Last day for fiscal committees to hear and report to the floor bills introduced in their house.
(6) May 26—Last day for fiscal committees to meet prior to June 5.
(7) June 2—Last day for each house to pass bills introduced in their house.
(8) June 5—Committee meetings may resume.
(9) July 14—Last day for policy committees to meet and report bills.
(10) Sept. 1—Last day for fiscal committees to meet and report bills.
(11) Sept. 5 through Sept. 15—Floor session only. No committee may meet for any purpose.
(12) Sept. 15—Last day for each house to pass bills.

(b) Even-numbered year:

(1) Jan. 19—Last day for policy committees to hear and report to fiscal committees fiscal bills introduced in their house in the odd-numbered year.
(2) Jan. 26—Last day for any committee to hear and report to the floor bills introduced in their house in the odd-numbered year.
(3) Jan. 31—Last day for each house to pass bills introduced in their house in the odd-numbered year.
(4) Feb. 23—Last day for bills to be introduced.

(5) April 26—Last day for policy committees to hear and report to fiscal committees fiscal bills introduced in their house.
(6) May 10—Last day for policy committees to hear and report to the floor nonfiscal bills introduced in their house.
(7) May 17—Last day for policy committees to meet prior to June 3.
(8) May 24—Last day for fiscal committees to hear and report to the floor bills introduced in their house.
(9) May 24—Last day for fiscal committees to meet prior to June 3.
(10) May 31—Last day for each house to pass bills introduced in their house.
(11) June 3—Committee meetings may resume.
(12) July 5—Last day for policy committees to meet and report bills.
(13) Aug. 16—Last day for fiscal committees to meet and report bills.
(14) Aug. 19 through Aug. 30—Floor session only. No committee may meet for any purpose.
(15) Aug. 31—Last day for each house to pass bills.

(c) If a bill is acted upon in committee before the relevant deadline and the committee votes to report the bill out with amendments that have not at the time of the vote been prepared by the Legislative Counsel, the Secretary of the Senate and the Chief Clerk of the Assembly may subsequently receive a report recommending the bill for passage or for rereferral together with the amendments at any time within two legislative days after the deadline or, if the Legislature has recessed for the Summer Recess, within seven calendar days after the deadline.

(d) Notwithstanding subdivisions (a) and (b), a policy committee may report a bill to a fiscal committee on or before the relevant deadline for reporting nonfiscal bills to the floor, if, after the policy committee deadline for reporting the bill to fiscal committee, the Legislative Counsel's Digest is changed to indicate reference to fiscal committee.

(e) Bills in the house of origin not acted upon during the odd-numbered year as a result of the deadlines imposed in subdivision (a) may be acted upon when the Legislature reconvenes after the interim study joint recess, or at any time the Legislature is recalled from the interim study joint recess.

(f) The deadlines imposed by this rule shall not apply to the rules committees of the respective houses.

(g) The deadlines imposed by this rule shall not apply in instances where a bill is referred to committee under Rule 26.5.

(h) The deadlines imposed by this rule shall not apply in instances where a bill is referred to a committee under Assembly Rule 77.2.

(i) (1) Notwithstanding subdivisions (a) and (b), a policy committee or fiscal committee may meet for the purpose of hearing and reporting a constitutional amendment, or a bill that would go into immediate effect pursuant to subdivision (c) of Section 8 of Article IV of the Constitution of California, at any time other than those periods when no committee may meet for any purpose.

(2) Notwithstanding subdivisions (a) and (b), either house may meet for the purpose of considering and passing a constitutional amendment, or a bill that would go into immediate effect pursuant to subdivision (c) of Section 8 of Article IV of the Constitution of California, at any time during the session.

(j) This rule may be suspended as to any particular bill by approval of the Committee on Rules and two-thirds vote of the membership of the house.

RESOLUTION CHAPTER 68

Senate Joint Resolution No. 27—Relative to school lands.

[Filed with Secretary of State September 6, 1996.]

WHEREAS, In 1853, the United States Congress granted to the State of California the 16th and 36th sections of every township of public land to support the public education system in California, a grant long held by the courts to create a "solemn agreement" between the federal government and the state; and

WHEREAS, In California, the State Teachers' Retirement System is the beneficiary of revenues derived from those school lands; and

WHEREAS, Those revenues are a significant source of income to the retired teachers of the state; and

WHEREAS, Elk Hills Naval Petroleum Reserve Numbered 1 contains two school land sections rich in oil reserves and constituting the two most valuable school land sections in the state; and

WHEREAS, The inclusion of these school lands within the petroleum reserve in 1912 made them unavailable to the state, with the result being that the State Teachers' Retirement System is deprived of substantial income; and

WHEREAS, Ever since 1976, the federal government has been producing oil and gas from the naval petroleum reserves at the

maximum efficient rate and selling its production to gain further general revenues for the United States Treasury; and

WHEREAS, The federal government has stated that the role of the national petroleum reserves "has evolved over time from an emergency source of oil to an income-generating federal business asset," and that "federal ownership and operation of the reserves is not essential to the national energy policy goals and objectives"; and

WHEREAS, The Department of Energy proposes to sell Elk Hills Naval Petroleum Reserve Numbered 1, as part of the President's 1996 Budget submission to Congress calling for the privatization of the naval petroleum reserves, and has earmarked 9 percent of the anticipated proceeds from privatization to be paid to the State of California to benefit the Teachers' Retirement Fund; and

WHEREAS, Congress has passed, and the President has signed, legislation to compensate California after the sale of Elk Hills Naval Petroleum Reserve Numbered 1; and

WHEREAS, That compensation will be based on an agreement between the State of California and the Department of Energy; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress to expedite the agreement by the Department of Energy for recognizing the valid claim of this state to the two school land sections within the reserve, and to compensate California's retired teachers for their 9 percent interest in the reserve upon its sale; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Secretary of the Interior, the Secretary of Energy, and the Secretary of Defense.

RESOLUTION CHAPTER 69

Senate Joint Resolution No. 53—Relative to the compensation of retired military personnel.

[Filed with Secretary of State September 6, 1996.]

WHEREAS, The recent worldwide conflicts have highlighted again the contributions of this nation's military and retired veterans; and

WHEREAS, Integral to the success of our military forces are those servicemen and servicewomen who have made a career of defending their country, who in peacetime may be called away to places remote

from their families and loved ones, and who in war face the prospect of death or of serious disabling wounds as a constant possibility; and

WHEREAS, Legislation has been introduced by the United States Congress to remedy an inequity applicable to military careerists; and

WHEREAS, The inequity concerns those veterans who are both retired and disabled and who, because of an antiquated law that dates back to the nineteenth century, are denied concurrent receipt of full retirement pay and disability compensation pay, but instead may receive one or the other or must waive an amount of retirement pay equal to the amount of disability compensation pay; and

WHEREAS, No such deduction applies to the federal civil service so that a disabled veteran who has held a nonmilitary federal job for the requisite duration receives full longevity retirement pay undiminished by the subtraction of disability pay; and

WHEREAS, A statutory change is necessary to correct this injustice and discrimination in order that America's occasional commitment to war in pursuit of national and international goals may be matched by an allegiance to those who sacrificed on behalf of those goals; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California urges the Congress of the United States to amend Chapter 71 (commencing with Section 1401) of Title 10 of the United States Code, relating to the compensation of retired military personnel, to permit full concurrent receipt of military longevity retirement pay and service-connected disability pay; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of Defense, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 70

Assembly Concurrent Resolution No. 30—Relative to African-Americans.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, California's history and development have been shaped largely by the contributions of its African-American population, the members of which have effected important social and political policy changes in education, arts, language, civil rights, labor, and other facets of California's lifestyle that have resulted in more inclusionary policies towards people of color. These influences

have broadened the state's perspective on its diverse population and have impacted the state's laws, institutions, and policies; and

WHEREAS, Even with these contributions, current statistics demonstrate that large segments of the African-American population have not benefited from California's advances—a fact that is reflected in their high levels of poverty, unemployment and academic dropout rates, low levels of political participation and self-esteem, intracommunity violence, including domestic violence, homicides, and riots. Moreover, these indicators signal that this important segment of California's population is turning on itself, as well as non-African-American constituencies, as an expression of their frustration and oppression; and

WHEREAS, The Legislature recognizes that current social, economic, and political problems in African-American communities largely stem from history—that is, a history of slave trade which stripped its victims of culture, language, and self-esteem, a history of laws denying African-Americans equal rights and protection, and a history of institutionalized discrimination which continues to keep African-Americans poor, jobless, powerless, and desperate; and

WHEREAS, This history separates African-Americans from other ethnic populations in this state who have immigrated to this country, and presents unique problems impacting personal and intimate aspects of African-American lives; and

WHEREAS, It is in the best interest of this state that causes which contribute to the problems of the African-American community and which inhibit that community's full participation in the educational, political, scientific, social, and economic activities of this state, be examined and eliminated; and

WHEREAS, The continued exclusion, underutilization, and underdevelopment of resources that exist in African-American communities threaten the stability of the state's economy and its social structure; and

WHEREAS, Studies of African-Americans problems have focused largely on pathological aspects of the community or have unfairly compared African-Americans with European-Americans in spite of the wide cultural, economic, political, and social differences between these populations. Many of these studies victim-blame, concluding that African-Americans cause their own problems even when they have negligible power to change their situations, or the studies employ European-type solutions to African-American problems; and

WHEREAS, The intent of the Legislature is that a subject-friendly approach be used to search policies and institutional practices that contribute to the problems specified in this resolution, and that researchers look at the problem, not the victim, to determine its causes and offer solutions; and

WHEREAS, Fatal diseases such as cancer, AIDS, sarcoidosis, and cardiovascular conditions shorten African-American lives in appalling proportions. Chronic conditions, such as high blood

pressure, diabetes, and asthma, continue to surface in the African-American community, affecting longevity and productivity. Infant mortality and lack of access to health services and information continue to be pressing problems; and

WHEREAS, African-Americans are subject to multiple stress factors that may impact on their positive mental health. The necessary ingredients required for African-Americans to develop and maintain a healthy sense of themselves in families, interpersonal relationships, and employment, and in being productive, valued members of society, are often jeopardized by personal, social, and institutional forms of oppression such as racism, sexism, classism, and heterosexism; and

WHEREAS, A preponderance of research on the mental health of African-Americans compares them to European-Americans, in order to compare the similarities and differences between the two populations. One of the problems with this type of research is that it assumes that European-American value systems associated with ways of developing, feeling, thinking, and behaving are the ideal for everyone. Hence, African-Americans may be seen as "less than" others when their development and cognitive styles and behavior are different from the so-called normative standards; and

WHEREAS, Statistics indicate that domestic violence between males and females is more prevalent in the African-American community than in white communities; and

WHEREAS, "Societal sexism" generally places the burden of child-rearing on mothers while concurrently devaluing women economically and socially; and

WHEREAS, This devaluation of women undermines their parental authority and negates the moral values these single female parents try to instill in their children. With little support from government or the African-American community, while these African-American women bear the burden of raising the children, they receive criticism for their condition. This burden-criticism dilemma places a high price on the well-being of African-American mothers and children. Many African-American mothers get around these barriers successfully and rear children who are productive members of society. Others are forced to relinquish parental responsibilities to the foster care system, where 40 percent of the children are African-American; and

WHEREAS, The state has recognized the enormous problems affecting African-American communities which inspired the recent creation of the Commission on the Status of Black Males, the California State University-based Center for Applied Cultural Studies, and the Center for African-American Educational Excellence. However, other aspects affecting African-American communities, such as health problems stemming from hazardous and toxic wastes in their communities, domestic violence, mental and

physical health, and single parent households, have not had adequately focused research; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby requests the University of California to prepare a series of studies on aspects of the African-American community. It is the intent of the Legislature that this resolution be advisory in nature and that it encourage a series of activities on the part of the University of California designed to address the public policy concerns identified in this measure:

(a) Physical Health. Statistically, African-Americans are in far worse physical health than other segments of the population. Yet, medical research to date has failed to adequately address critical differences in health care approaches between African-American and non-African-American populations.

Therefore, the Legislature hereby requests that the University of California conduct a study to determine what steps should be taken to address African-American health problems and to develop programs that seek to solve disproportionate health problems in the African-American community. Moreover, it is requested that this study include focus on environmental and institutional factors contributing to poor physical health among African-Americans.

(b) Mental Health. Much of past research concerning African-Americans has suffered from categorizing them in a deficit or negative model which forsakes the positive forces that shape their lives and contribute to their good mental health status. There is presently an effort to research psychological issues pertinent to African-Americans that moves away from the deficit model to acknowledging African-Americans as experts on their own reality.

Therefore, the Legislature hereby requests that the University of California consider using this model in conducting a study to examine the factors, including resiliency, that lead to effective coping strategies and positive mental health in African-Americans. This study will be useful to inform not only students and practitioners of the mental health professions who may treat members of the African-American community, but also to inform the community itself so as to promote African-American-centered mental health programs and policies.

(c) Domestic Violence. The Legislature therefore requests that the University of California examine whether societal sexism within economically, politically, and socially depressed African-American communities contributes to the high incidences of domestic violence between males and females in African-American communities.

(d) Education. Proposals for African-American-centered academics have appeared both in California and the nation as a means to improve academic performances among African-American students. The Legislature, therefore, requests that the University of California conduct research to determine whether these new

approaches to educating African-Americans may improve academic performance and motivation.

(e) Single Parents and the Changing Family. Sixty-three percent of African-American households are managed by single female parents. These female parents work to overcome societal policies that discriminate against women both within and outside the African-American community.

The Legislature, therefore, requests that the University of California review societal sexism and the barriers it creates for African-American single parents. In addition, the Legislature requests that the University of California compare successful single female-headed households with children against those that are not successful and the elements that create the differences between them; and be it further

Resolved, That the Legislature requests that the University of California focus resources to stimulate research and to promote evaluation and analyses of these problems by knowledgeable academicians, members of the professional and business communities, government officials, political and community leaders, and concerned citizens so that they may propose solutions that will benefit all segments of our society; and be it further

Resolved, That the Legislature requests that the University of California seek suitable research and graduate training funds commensurate with this research request in an effort to develop comprehensive solutions to these crucial state problems; and be it further

Resolved, That these policy research efforts consider the use of existing data, whenever possible, and encourage the creation of new data when needed; and be it further

Resolved, That the University of California consider, as an initial priority, the gathering and examining of information and data on existing efforts, including those conceived by African-American scholars, that propose solutions to these problems, and available funding so that a work product can be organized in a manner that will avoid duplication of effort and cross purposes; and be it further

Resolved, That, for these purposes, the University of California is asked to make concrete efforts to seek funds from foundations, private sources, and the state and federal government; and be it further

Resolved, That the University of California consider establishing an advisory committee as part of the task force to assist in the development of a report, or a series of reports, to be presented to the Legislature setting forth the results of these studies. The advisory committee should include persons knowledgeable about the African-American community or from groups that represent that community, or both; and be it further

Resolved, That, through the adoption of this resolution, the Legislature once again expresses its confidence in the ability of the

nation's greatest university system to assist the state in addressing these important public policy problems and in meeting the full potential of California as we prepare to enter the 21st century; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Regents of the University of California.

RESOLUTION CHAPTER 71

Assembly Concurrent Resolution No. 48—Relative to the City of San Bernardino.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, The City of San Bernardino is the pride of the Inland Empire, with a heritage rich in culture and diversity; and

WHEREAS, San Bernardino possesses one of the longest running symphony orchestras in the state, as well as opera, a music series, live theatre, a county museum, and an entertainment center; and

WHEREAS, San Bernardino offers educational opportunities through San Bernardino State University, San Bernardino Valley College, Crafton College, and the nearby University of Redlands, University of California at Riverside, and Riverside Community College, as well as numerous other postsecondary institutions, libraries, and literary and art programs; and

WHEREAS, San Bernardino's residents and visitors take advantage of the area's proximity to mountains and ocean for recreational activities such as fishing, hiking, skiing, hunting, backpacking, golfing, and boating, and enjoy local programs through such organizations as the YMCA and YWCA; and

WHEREAS, San Bernardino is the site of the Western Regional Little League tournaments, and is undertaking construction of a sports stadium for the Spirit baseball team; and

WHEREAS, San Bernardino is continuing to revitalize its downtown area with the construction of a new state office building; and

WHEREAS, San Bernardino is experiencing healthy economic growth, with the reuse of the former Norton Air Force Base adding new employees to base properties, and plans for a new international trade center and a major aircraft maintenance operation that will add thousands of more jobs to the area; and

WHEREAS, San Bernardino is the center of excellent transportation services, including the Ontario Airport and the interstate freeway system; and

WHEREAS, San Bernardino is one of the premiere areas for affordable homes, an attribute that, along with its moderate climate, enhances the quality of life for its residents; and

WHEREAS, San Bernardino boasts several outstanding medical facilities, including St. Bernardine Hospital, Loma Linda Hospital, and County Hospital; and

WHEREAS, In recognition of these facts, the people of San Bernardino have initiated a community-wide program known as "It's a Great Day in San Bernardino"; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby declares the week commencing November 4, 1996, as "It's a Great Day in San Bernardino Week"; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the City Council of San Bernardino.

RESOLUTION CHAPTER 72

Assembly Concurrent Resolution No. 50—Relative to the Blue Star Memorial Highway.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, The Blue Star Memorial Highway project was adopted in 1946 by the National Council of State Garden Clubs; and

WHEREAS, The purpose of the Blue Star Memorial Highway project is to erect highway markers at roadside rest stops, vista points, historical sites, and other appropriate areas to pay tribute to all who have served or will serve in the nation's armed forces; and

WHEREAS, The Bay Ocean District of California Garden Clubs, Incorporated, wishes to erect a marker at the state roadside rest stop on Interstate Highway Route 280, located between the Hayne Road overpass and the Crystal Springs Road overpass; and

WHEREAS, The California Garden Clubs wish to designate Interstate Highway Route 280, from the intersection with Third Street in the City and County of San Francisco to the junction with Interstate Highway Route 680, in San Jose, as a Blue Star Memorial Highway; now, therefore, be it

Resolved, by the Assembly of the State of California, the Senate thereof concurring, That Interstate Highway Route 280, from the intersection with Third Street in the City and County of San Francisco to the junction with Interstate Highway Route 680, in San Jose, is hereby officially designated a Blue Star Memorial Highway; and be it further

Resolved, That the Department of Transportation is requested to grant to the Bay Ocean District of California Garden Clubs,

Incorporated, without charge, an encroachment permit that will authorize an appropriate marker to be placed at the state roadside rest stop on Interstate Highway Route 280, located between the Hayne Road overpass and the Crystal Springs Road overpass; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing the special designation of Interstate Highway Route 280 as a Blue Star Memorial Highway and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Director of Transportation, the National Council of State Garden Clubs, and the Bay Ocean District of California Garden Clubs, Incorporated.

RESOLUTION CHAPTER 73

Assembly Concurrent Resolution No. 57—Relative to highways.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, California Highway Patrol Officer Franke A. Story, badge number 4238, a dedicated traffic officer, was killed in the line of duty at the age of 25 years, while on a traffic stop on northbound State Highway Route 86 at Larsen Road in the early morning darkness of July 19, 1967; and

WHEREAS, Officer Story, who was unaware that the vehicle he had stopped had been stolen earlier, was shot and killed by the driver; and

WHEREAS, The driver, who was prosecuted for the murder of Officer Story and sentenced to life in prison, died in prison in 1996; and

WHEREAS, Officer Franke A. Story began his career with the Department of the California Highway Patrol on January 3, 1966, and was assigned to the El Centro Area Office in Imperial County on April 27, 1966; and

WHEREAS, Officer Story was survived by a wife and daughter; and

WHEREAS, The dedication contemplated by this measure will remind us all of the dangers confronting officers each time they put on the uniform, make an enforcement stop, or uncover a crime; and

WHEREAS, It is fitting, therefore, that the portion of State Highway Route 86 between the City of Imperial and the City of Brawley in Imperial County be dedicated to the memory of this

officer who made the ultimate sacrifice in his service to the people of the State of California; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the portion of State Highway Route 86 between the City of Imperial and the City of Brawley in Imperial County be officially designated the California Highway Patrol Officer Franke A. Story Memorial Highway; and be if further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, identifying California Highway Patrol Officer Franke A. Story, and upon receiving donations from nonstate sources sufficient to cover that cost, to erect those plaques and markers; and be it further

Resolved, That State Highway Route 85 is hereby officially designated the West Valley Freeway; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing the designation of the West Valley Freeway and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 74

Assembly Concurrent Resolution No. 68—Relative to the Parker B. Rice Memorial Bridge and the Richard "Fresh Air" Janson Bridge.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, Parker B. Rice, a native Californian, World War II veteran, newspaperman, prominent leader in veteran's and service organizations, as well as devoted husband, father, and grandfather, will be missed by all who knew him, and by those who benefited from his many exceptional accomplishments on behalf of veterans; and

WHEREAS, Following his enlistment at the age of 18, Parker Rice served as an Army Air Corps aircraft mechanic and saw action throughout the South Pacific, while rising to the rank of Master Sergeant; and

WHEREAS, Wounded in action during the landing of American forces in the Philippines, he was honorably discharged in 1946; and

WHEREAS, He then embarked on a 41-year career with the Santa Rosa "Press Democrat," beginning as an apprentice stereotyper, and rising to production manager; and

WHEREAS, In 1951, Parker B. Rice joined the Disabled American Veterans (DAV) Chapter 48, Santa Rosa, an affiliation that was to last 43 years, until his death on February 15, 1995, at the age of 71; and

WHEREAS, During his long tenure with the Disabled American Veterans, Mr. Parker served as Commander of the California Department from 1955–56, and for 15 years served on the prestigious Claims and Service Commission, chairing the commission for 10 years; and

WHEREAS, At the national level, Mr. Rice served as a member of the 16th District National Executive Committee, and held National Junior and Senior Vice Commander positions; and

WHEREAS, It is appropriate that the State of California recognize and memorialize the many contributions that Parker B. Rice has made to his community, state, and nation; and

WHEREAS, The Sonoma Creek Bridge on State Highway Route 37 in Sonoma County would provide a unique opportunity to honor one of the Pacific Coast's outstanding artisans; and

WHEREAS, Decoy carving requires great skill, craftsmanship, and knowledge of waterfowl; and

WHEREAS, Richard Ludwig "Fresh Air Dick" Janson is recognized as one of the premier decoy carvers in the American West; and

WHEREAS, Mr. Janson's career spanned three decades from the early 1920's until his death in 1951; and

WHEREAS, Mr. Janson's carvings set the "gold standard" against which all other Pacific Coast decoys are evaluated; and

WHEREAS, His carvings educated many relating to, and created an appreciation of, the waterfowl along the Pacific Flyway; and

WHEREAS, Mr. Janson was born in Estonia near the Baltic seaport of Riga, had a Swedish name, and spoke German; and

WHEREAS, His life reflects the rich diversity of California and contributions from many regions of the world; and

WHEREAS, Mr. Janson lived on an ark moored one-half mile from the bridge where he carved the decoys on Sonoma Creek for most of his life now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That Bridge No. 20-0267, located near the Santa Rosa Memorial Building and Sonoma County Fair Grounds on State Highway Route 12, is hereby officially designated the Parker B. Rice Memorial Bridge; and be it further

Resolved, That the Sonoma Creek Bridge on State Highway Route 37 in Sonoma County is hereby officially designated the Richard "Fresh Air" Janson Bridge; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing these special designations and, upon receiving donations from

nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 75

Assembly Concurrent Resolution No. 76—Relative to the billing procedures of health facilities.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, Medical billing for services rendered and supplies provided to a patient in a health facility may contain errors causing inappropriate amounts of money to be paid to the health facility; and

WHEREAS, Medical billing may be incorrect as to the services rendered to an insured patient; and

WHEREAS, Mistakes have been made where medications and supplies not used by an insured patient were billed to the patient; and

WHEREAS, Without some sort of check upon these expenditures, both Medicare and supplementary insurance carriers will continue to raise their rates; and

WHEREAS, It is difficult to correct any errors made in the billing after the insurer has paid the health facility or the doctor; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California requests that every health facility, as defined in Section 1250 of the Health and Safety Code, except for correctional treatment centers, provide a patient, if requested by the patient and to the extent permitted by law, with an itemized bill that is as understandable as possible, as quickly as possible after the patient's release from the health facility so that the patient may verify the accuracy of the charges.

RESOLUTION CHAPTER 76

Assembly Concurrent Resolution No. 94—Relative to Red Ribbon Week.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, Californians for Drug-Free Youth, Inc. (CADFY), a statewide parent-community organization, the office of the Governor, the office of the Attorney General, the State Department

of Alcohol and Drug Programs, the State Department of Education, the California Parent Teacher Association, and over 100 other statewide agencies, departments, and organizations are cosponsoring October 23 through October 31, 1996, as Red Ribbon Week; and

WHEREAS, Parents, youth, schools, businesses, law enforcement, religious institutions, service organizations, senior citizens, medical and military personnel, sports teams, and individuals throughout the State of California will demonstrate their commitment to drug-free, healthy lifestyles by wearing and displaying red ribbons during this weeklong celebration; and

WHEREAS, The theme of this year's effort is "BE HEALTHY AND DRUG FREE!"; and

WHEREAS, Drug abuse stands as one of the major challenges our state faces in securing a safe and healthy future for our children; and

WHEREAS, The objective of Red Ribbon Week, 1996, will be to promote this view though drug prevention, education, parental involvement, and communitywide support; and

WHEREAS, The California State Assembly has further committed its resources to ensure the success of the Red Ribbon Week celebration; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature does hereby proclaim its support for the Red Ribbon Week celebration by proclaiming October 23 through October 31, 1996, as Red Ribbon Week; and be if further

Resolved, That the Legislature encourages all Californians to help build drug-free communities and to participate in drug prevention activities by making a visible statement that we are firmly committed to healthy, productive, drug-free lifestyles; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor of the State of California, and to the author for appropriate distribution throughout the community.

RESOLUTION CHAPTER 77

Assembly Concurrent Resolution No. 96—Relative to the Bruce T. Hinman Memorial Freeway Interchange.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, California Highway Patrol Officer Bruce T. Hinman, a veteran officer of over nine years, was killed in the line of duty while assisting three young persons whose car had broken down at the freeway interchange between the Hollywood Freeway and the Ventura Freeway on the evening of September 26, 1995; and

WHEREAS, Officer Hinman was struck by a drunk driver who was subsequently charged and prosecuted for the officer's death; and

WHEREAS, Officer Hinman sacrificed his life in an attempt to wave off the oncoming drunk driver and save the lives of the three young people he was assisting; and

WHEREAS, Officer Bruce Thomas Hinman began his career with the Department of the California Highway Patrol on August 18, 1986, and was assigned to the West Valley Area of Los Angeles County on January 8, 1987, where he spent his entire career riding a California Highway Patrol motorcycle while providing for the safety and assistance of motorists using the streets and highways of this state; and

WHEREAS, Officer Hinman was held in high esteem by his wife, three sons, parents, colleagues, and other individuals fortunate enough to know him; and

WHEREAS, This tribute serves as a solemn reminder of the inherent dangers faced by the men and women of law enforcement on a daily basis; and

WHEREAS, It is fitting, therefore, that this particular freeway interchange be dedicated to the memory of this officer who made the ultimate sacrifice in his service to the people of the State of California; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the freeway interchange between the Hollywood Freeway and the Ventura Freeway in the County of Los Angeles is hereby officially designated the Bruce T. Hinman Memorial Freeway Interchange; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing the special designation, clearly displaying the star of the Department of the California Highway Patrol, and identifying California Highway Patrol Officer Bruce T. Hinman and, upon receiving donations from nonstate sources sufficient to cover that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 78

Assembly Concurrent Resolution No. 97—Relative to Workplace Fitness Month.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, The federal government has commissioned numerous reports on employee wellness and concluded that physical fitness plays an important role in the overall health of employees; and

WHEREAS, The California Legislature has a history of supporting efforts that recognize and encourage physical fitness; and

WHEREAS, The goals of the California Governor's Council on Physical Fitness and Sports include advancing the physical fitness of all California citizens, with an emphasis on health and fitness activities for employees in the public and private sectors; and

WHEREAS, There is no question that regular exercise improves a person's ability to perform, reduces stress, and enhances self-image, thereby reducing job grievances, on-the-job accidents, and lost time; and

WHEREAS, Employee-participants in a fitness program are reported to be more alert, have a better rapport with coworkers and supervisors, and enjoy work more than those who do not participate, and participants indicate that they are more relaxed, more patient, and less tired during the workday; and

WHEREAS, Employers find that employees who exercised were absent from work fewer days than employees who did not; and

WHEREAS, The evidence pointing to the success of fitness programs in improving employee health practices, reducing medical and disability costs, and improving productivity is indisputable; and

WHEREAS, The California Legislature supports the promotion of employee fitness programs as a means to reduce workplace absenteeism and employee turnover while bolstering employee morale and commitment; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the month of October 1996, as Workplace Fitness Month in California to encourage all Californians to participate in regular exercise programs and physical activity for healthier lives and improved work performance and satisfaction; and be it further

Resolved, That the Chief Clerk of the Assembly transmit this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 79

Assembly Concurrent Resolution No. 98—Relative to the Julia Ann Singer Center.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, The Julia Ann Singer Center is celebrating its Eightieth Anniversary, and it is appropriate at this time to highlight

its many achievements and to underscore the positive impact that it has made in the local community; and

WHEREAS, The Julia Ann Singer Center was founded in 1916, moved to the Vista Del Mar campus in 1982, and became one of the organization's affiliated agencies; and

WHEREAS, Vista Del Mar had its beginnings as the Jewish Orphans' Home of Southern California, which was founded in East Los Angeles in 1908; today, the organization is a union of four specialized agencies—Julia Ann Singer Center, Vista Del Mar Child and Family Services, Reiss-Davis Child Study Center, and Home-SAFE Child Care—all dedicated to the well-being and care of children and families who suffer the emotional, physical, psychological, and social consequences of abuse, neglect, and abandonment; and

WHEREAS, Vista Del Mar, located on a 17-acre West Los Angeles campus, is one of the nation's largest, most comprehensive child care centers, caring for youngsters of all ethnicities and economic backgrounds from throughout the Southland region; and

WHEREAS, The Julia Ann Singer Center is an outpatient facility serving learning disabled, emotionally disturbed, developmentally delayed, and abused children and their families; and

WHEREAS, The Center's services include: an innovative therapeutic school designed for children of ages three through eight having emotional disturbances, learning disabilities, and developmental delays; a family therapy program designed to help the parents of children with serious behavioral problems to develop the communication skills needed to enhance interaction and decrease stress related to their special-needs children; a child abuse treatment program, emphasizing prevention and protection, that provides parent education classes, therapeutic children's groups, and family counseling services, as well as a 24-hour crisis intervention hotline and home evaluation visits to identify and correct potential problems that might impede a child's growth or present a threat to safety; a school consultation program performed in conjunction with area schools that assists teachers in identifying children who may need special help to improve their classroom functioning; and project success, a program that provides diagnostic assessment and remedial services for preschool and school-age children who have learning disabilities or need extra support in achieving their full potential; and

WHEREAS, Since its establishment in 1916, the Julia Ann Singer Center has evolved into a leading agency in the Los Angeles area, a dynamic force striving to improve the quality of life of its clients and the general community; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Julia Ann Singer Center be congratulated on the occasion of its Eightieth Anniversary, commended on the outstanding contributions that it has made to the

local community through its programs, and extended best wishes for continued success in the future; and be it further

Resolved, That September 19, 1996, be recognized as Julia Ann Singer Center Day; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 80

Assembly Joint Resolution No. 51—Relative to Filipino veterans.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, The Philippines were a Commonwealth of the United States prior to and during World War II; and

WHEREAS, The President of the United States called military forces organized by the Commonwealth government into the service of the United States Armed Forces on July 26, 1941; and

WHEREAS, The vast majority of American soldiers who opposed the Japanese invasion of the Philippines from December 1941 through March 1942 were Filipinos, who gallantly fought down the length of the Bataan peninsula, and endured unbearable hardships during the siege of Corregidor; and

WHEREAS, Following the surrender of Corregidor Filipino soldiers, isolated from the rest of the world with only the hope that American forces might someday return, courageously waged guerrilla warfare against the Japanese occupation; and

WHEREAS, Filipino soldiers fought bravely alongside returning Allied forces to liberate the Philippines and restore order in the war-torn islands until the official end of hostilities in 1947; and

WHEREAS, Filipino nationals who served in the regular components of the United States Armed Forces or the Regular Filipino Scouts ("Old Scouts") are considered United States veterans and are entitled to the full range of benefits available to all other American veterans; and

WHEREAS, Filipino nationals who answered America's call and compiled an unsurpassed record of military service and hardship while serving in the Philippine Commonwealth Army and the Special Philippine Scouts ("New Scouts") are not now eligible for the same benefits as other veterans, despite serving our colors in the United States Armed Forces; and

WHEREAS, All other nationals, even foreigners, who served in the United States Armed Forces have been recognized and granted full rights and benefits, but the Filipinos who actually were American nationals at that time were and are still denied recognition and

singled out for exclusion, and this treatment is unfair and discriminatory; and

WHEREAS, On March 6, 1995, House Resolution 1136 was introduced in the United States House of Representatives, and on January 4, 1995, Senate Bill 55 was introduced in the United States Senate, to deem service in the organized military forces of the government of the Commonwealth of the Philippines and the Philippine Scouts during World War II to be active service for the purpose of benefits under programs administered by the Secretary of Veteran Affairs; and

WHEREAS, On January 4, 1995, Senate Bill 72 was introduced in the United States Senate, to direct the Secretary of the Army to issue a certificate of service to Filipino nationals whom the secretary determines have performed any military service in the Philippine Islands during World War II that qualifies the person or a survivor to receive any military, veterans', or other benefits under federal laws; and

WHEREAS, The proposed legislation would bring relief to the estimated remaining 60,000 to 80,000 Filipino veterans (out of the initial 175,000 to 200,000 troops) who risked their lives during World War II, surviving the occupation of the Philippine Islands and the infamous Bataan Death March, and who, now in their mid-60's to mid-90's, have been battling for years to obtain the recognition and benefits of other veterans of that war; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to act favorably on legislation giving proper recognition to the service of all Filipino veterans during World War II, and on legislation pertaining to granting full veterans' benefits to all Filipino veterans of the United States Armed Forces; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 81

Assembly Joint Resolution No. 73—Relative to amending the regulations implementing the Civil Liberties Act of 1988.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, The Civil Liberties Act of 1988 provides redress in the form of a letter of apology from the United States government and

the award of a restitution of $20,000 to each individual of Japanese ancestry who was interned or otherwise deprived of liberty or property during World War II, but denies redress to any person who was relocated to a country with which the United States was at war; and

WHEREAS, The Office of Redress Administration (ORA) has reconsidered the case of minors who were relocated to Japan during World War II since these minors did not have the capacity to choose freely to relocate to Japan and has proposed to amend the regulations that would make minors who were relocated to Japan from America's internment camps during World War II eligible for redress and reparations under the Civil Liberties Act of 1988; and

WHEREAS, The National Coalition for the Redress Reparations (NCRR) has urged the United States Attorney General to take administrative action to amend the regulations of the Civil Liberties Act of 1988 to redress United States citizens who were relocated to Japan from America's internment camps as minors during World War II; and

WHEREAS, The United States Attorney General has subsequently proposed a change to the regulations of the Civil Liberties Act of 1988, to make eligible for payments of $20,000 those persons who are otherwise eligible for redress under the regulations, but who involuntarily relocated during World War II to a country with which the United States was at war; and

WHEREAS, The minors who were relocated to Japan from America's internment camps during World War II were unfortunate victims in a hostage exchange program since they were shipped to India and then transferred to a Japanese vessel to serve our national interest in an exchange with Japan to bring home "white" American tourists and businessmen who were held in concentration camps in Asia; and

WHEREAS, Persons who were relocated to Japan from America's internment camps as minors during World War II should be redressed for their forced evacuation, the loss of liberty and property, their confinement in America's internment camps, and the violation of their constitutional rights; and

WHEREAS, The minors who were relocated to Japan from America's internment camps during World War II were victims of racism, wartime hysteria, and the failure of political leadership; now, therefore, be it

Resolved by the Assembly and Senate of the State of California jointly, That the Legislature respectfully urges the United States Attorney General to take administrative action, if possible, to adopt the proposed amendments to the regulations of the Civil Liberties Act of 1988 to redress United States citizens who were relocated to Japan from America's internment camps as minors during World War II; and be it further

Resolved, That in the event that the administrative action taken to amend the regulations of the Civil Liberties Act of 1988 does not provide the remedy sought, the Legislature respectfully memorializes the President and the Congress of the United States to amend the Civil Liberties Act of 1988 to permit United States citizens who were relocated to Japan from America's internment camps as minors during World War II to be eligible for redress and reparations; and be if further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and the Vice President of the United States, to the Congress of the United States, to each Senator and Representative from California in the Congress of the United States, to the Attorney General of the United States, and to the author for appropriate distribution.

RESOLUTION CHAPTER 82

Senate Concurrent Resolution No. 63—Relative to the Justice Joseph A. Rattigan Building.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, The Honorable Justice Joseph Austin Rattigan was born on January 24, 1920, and grew up in the nation's capital, Washington, D.C., earning his A.B. degree from the Catholic University of America, and eventually working as a junior economist in the Farm Security Administration of the United States Department of Agriculture; and

WHEREAS, Immediately following the Japanese attack on Pearl Harbor, he entered the United States Navy, where he first served as an intelligence officer in Central and South America and then entered combat as captain of a PT boat; and

WHEREAS, He distinguished himself repeatedly in seven campaigns, serving in combat areas in the southwest Pacific, New Guinea, Molucca, and the Philipine Islands, and was decorated for bravery under fire; and

WHEREAS, Following the war, Justice Rattigan graduated from Stanford University School of Law and was admitted to the practice of law in the State of California, and later was admitted to practice before the Supreme Court of the United States; and

WHEREAS, In 1958 he was elected to the office of state Senator, serving two consecutive terms from 1959 to 1966, inclusive, where he chaired the Senate Committee on Local Government, and earned a reputation for his keen intellect, driving work ethic, and unwavering integrity; and

WHEREAS, During his tenure in the Senate he authored legislation establishing Sonoma State College, and was the principal architect of the Rattigan-Burton Act, a pre-Medicare law that established California's first and the nation's largest program providing medical and hospital care to senior citizens; and

WHEREAS, In 1966, following his decision to retire from the California Senate, he was appointed Associate Justice of the Court of Appeal for the First Appellate District by Governor Edmund G. Brown; and

WHEREAS, During his 18 years on the Court of Appeal, Justice Rattigan distinguished himself as one of California's leading jurists, personally writing more than 1,000 appellate decisions and participating in more than 3,000 others; and

WHEREAS, In recognition of Justice Rattigan's standing in the legal community, command of the law, and commitment to the pursuit of justice, he was appointed by the Chief Justice of the California Supreme Court to serve two terms as a member of the California Judicial Council, the body that manages the administration of justice at all court levels throughout the state; and

WHEREAS, In 1977 Justice Rattigan again served his country by participating as one of three delegates representing the United States at a United Nations Convocation on Criminal Justice; and

WHEREAS, In 1989, following his retirement from the Court of Appeal, Justice Rattigan was appointed by Secretary of State March Fong Eu to serve on the Fair Political Practices Commission, serving a full four-year term as the only former legislator, and the only former judge to serve on the five-member commission; and

WHEREAS, In 1993, the 600-plus members of the Sonoma County Bar Association presented Justice Rattigan with the first annual "Careers of Distinction Award," an honor that was only equaled by the honorary degree of Doctor of Laws conferred upon Justice Rattigan by Sonoma State University in 1994; and

WHEREAS, Although now retired from office, Justice Rattigan continues in public service as a member of the board of directors of numerous nonprofit and philanthropic organizations in Sonoma County and northern California; and

WHEREAS, During his very long and active involvement in civic affairs, Justice Rattigan served the State of California with distinction in the legislative, judicial, and executive branches of government, as well as at the city and county levels; and

WHEREAS, Throughout his life, both private and public, with courage and dedication, through conscientious and devoted service to his nation and to his state, in war and in peace, Justice Rattigan has proven himself to be a born leader; and

WHEREAS, Few men or women have distinguished themselves in service to the State of California to the degree of Justice Rattigan; and

WHEREAS, The Santa Rosa State Office Building, located at 50 D Street in the City of Santa Rosa within the County of Sonoma, would

provide a unique and appropriate opportunity to honor one of Sonoma County's and California's truly outstanding citizens and public servants; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Santa Rosa State Office Building, located at 50 D Street in the City of Santa Rosa within the County of Sonoma, is hereby redesignated the Justice Joseph A. Rattigan Building; and be it further

Resolved, That the Department of General Services is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for state buildings, showing this special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of General Services.

RESOLUTION CHAPTER 83

Senate Concurrent Resolution No. 66—Relative to postsecondary education.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, Recent revelations demonstrate to the Legislature that attorneys for the University of California recently advised one of its distinguished researchers, Dr. Betty Dong, that it could be detrimental to her and the university to contest a contract that she had signed with the corporate sponsor of her research permitting the corporation to suppress an academic manuscript that was to have been published by the Journal of the American Medical Association; and

WHEREAS, The results of the suppressed study would have likely been harmful to the financial interests of a major pharmaceutical manufacturer that had financed the study; and

WHEREAS, The contract for the study, entered into between the pharmaceutical manufacturer and Dr. Dong, included a so-called "gag clause"—a provision prohibiting publication of results of the study without the permission of the manufacturer; and

WHEREAS, The existence of a "gag clause" relating to academic research is antithetical to the spirit of free inquiry that must prevail at all publicly funded California universities; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That, to ensure academic freedom, the Legislature of the State of California urges 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 board of each community college district in the state to prohibit the institutions under their jurisdiction, or any of the staff or component parts of these institutions, from signing any agreement that requires the permission of an entity outside the institution to publish or otherwise communicate the results of academic research, unless the research involves proprietary information, the release of which would negatively affect the commercial value of the research of the sponsor, provided that the research does not affect the public health or welfare, or unless national security considerations require confidentiality; and be it further

Resolved, That the Legislature also urges 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 board of each community college district in the state to contest vigorously the enforcement of any such "gag clause" that may be a part of a contract previously executed by an institution under its jurisdiction, or any of the staff or component parts of that institution; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to each member of the Regents of the University of California, each member of the Trustees of the California State University, each member of the Board of Governors of the California Community Colleges, and the presiding officer of the governing board of each community college district in the state.

RESOLUTION CHAPTER 84

Senate Concurrent Resolution No. 67—Relative to Major League Baseball.

[Filed with Secretary of State September 11, 1996.]

WHEREAS, The pre-1947 baseball players established the foundation for the enormous benefits that today's players possess; and

WHEREAS, As a result of the efforts of the pre-1947 players, today's multimillionaires are assured of a prosperous pension in their advanced years; and

WHEREAS, If a player was not on a major-league roster the last day of the 1946 season or the first day of the 1947 season, he is not entitled to a pension; and

WHEREAS, Of this pre-1947 group of players, 77 are still alive, according to Dave Anderson, columnist for the New York Times, and a total of 408 people may be affected by the failure to provide royalties to these players; and

WHEREAS, Baseball, which prides itself on tradition and history, treats those 77 ex-major league baseball players as if they never existed and as if their contributions never occurred; and

WHEREAS, The current Acting Commissioner of Baseball agrees that the exclusion of the 77 former players from a pension program is categorically unfair; and

WHEREAS, Both the National Football League and the National Basketball League have voluntarily established funds for players who played prior to the establishment of the contemporary pension systems; and

WHEREAS, Not only are those 77 ex-major league baseball players denied pensions but their intellectual property rights have been violated and are violated, by the misappropriation of their names, photographs, and other likenesses for merchandise without permission or full and proper compensation; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the surviving 77 pre-1947 major league baseball players are entitled to both pensions and proper compensation for their intellectual property rights; and be it further

Resolved, That the Secretary of the Senate transmit forthwith copies of this resolution to the Commissioner of Baseball and to the Executive Director of the Players Association with the request for the inclusion of those 77 ex-players in the current and future benefits of the baseball players pension fund and for full compensation for the use of their names, photographs, and other likenesses.

RESOLUTION CHAPTER 85

Senate Concurrent Resolution No. 2—Relative to the selection of the Legislative Counsel of California.

[Filed with Secretary of State September 16, 1996.]

Resolved by the Senate of the State of California, the Assembly thereof concurring, That, pursuant to Section 10201 of the Government Code, Bion M. Gregory is selected as the Legislative Counsel of California.

RESOLUTION CHAPTER 86

Senate Concurrent Resolution No. 69—Relative to California Lung Health Day.

[Filed with Secretary of State September 16, 1996.]

WHEREAS, Lung disease is the third leading cause of death in California representing more than 30,000 deaths per year; and

WHEREAS, Lung disease and breathing problems constitute the number one killer of infants under the age of one year; and

WHEREAS, Each year, 42,000 Californians die from smoking-related causes, including lung cancer, cardiovascular disease, stroke, and respiratory diseases; and

WHEREAS, Smoking costs California $10 billion every year in medical costs and lost productivity; and

WHEREAS, More than 1.6 million Californians today suffer from asthma, including 600,000 children, a 58 percent increase in asthma cases since 1982; and

WHEREAS, Every year 17,000 children are hospitalized due to asthma, making asthma the leading cause of hospitalization among children; and

WHEREAS, Clean air is vital to lung health, quality of life, and a strong economy, and yet California's air continues to regularly violate state and federal health-based air quality standards; and

WHEREAS, Seven of the 12 counties in the nation with the highest levels of air pollution are in California, threatening the health of all Californians, but especially the young, elderly, and those with existing lung disease; and

WHEREAS, California has seen a dramatic increase in tuberculosis with 34 percent more cases being reported in 1995 than a decade ago, accounting for 20 percent of the nations's total tuberculosis caseload; and

WHEREAS, In California, between 1985 and 1994, there has been a 64 percent increase in tuberculosis cases in 5 to 14 year olds and a 73 percent increase in newborn to 4 year olds; and

WHEREAS, Because of these concerns, the American Lung Association has designated asthma, tobacco control, clean air, and tuberculosis top health priorities, and will provide public education, advocacy, and research to fight lung disease and promote lung health; now therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature does hereby proclaim September 20, 1996, as California Lung Health Day; and be it further

Resolved, That California Lung Health Day in 1996 presents an opportunity to reflect on current trends in lung disease and to recognize and appreciate the leadership role of the American Lung Association in fighting lung disease by increasing public awareness of the prevention and control of lung disease; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Governor.

1995–96

FIRST EXTRAORDINARY SESSION

EXTRAORDINARY SESSION SPECIAL RULES OF EFFECTIVENESS

Except for a statute calling an election, a statute providing for a tax levy or an appropriation calling for the usual current expenses of the state, and an urgency statute, all of which take effect immediately following enactment, a statute adopted during an extraordinary session takes effect on the 91st day following the adjournment of the special session (see subdivision (c) of Section 8 of Article IV of the California Constitution). The effective date of a concurrent resolution is the date it is filed with the Secretary of State.

The 1995–96 First Extraordinary Session reconvened on January 3, 1996. The Assembly adjourned *sine die* on September 1, 1996; the Senate adjourned *sine die* on August 31, 1996. The 91st day after adjournment is December 1, 1996.

Please refer to the preceding year's Statutes and Amendments to the Codes for statutes enacted prior to the reconvening date.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

A PROCLAMATION
by the
Governor of the State of California

WHEREAS, an extraordinary occasion has arisen and now exists requiring that the Legislature of the State of California be convened in extraordinary session; now therefore,

I, PETE WILSON, Governor of the State of California, by virtue of the power and authority vested in me by Section 3 (b) Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California, on the 19th day of January, 1995, at 1:30 p.m. of said day for the following purpose and to legislate upon the following subject:

To consider and act upon legislation relative to providing assistance to those persons and public entities that suffered losses as a result of the heavy rains and flooding in the counties for which I have proclaimed a State of Emergency.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 13th day of January 1995.

Governor of California

ATTEST:

Secretary of State

First Extraordinary Session

STATUTES OF CALIFORNIA

1995–96

FIRST EXTRAORDINARY SESSION

1996 CHAPTER

First Extraordinary Session

CHAPTER 11

An act to amend Sections 1601 and 1603 of, and to add Section 1603.3 to, the Fish and Game Code, relating to streambed alterations, and making an appropriation therefor.

[Approved by Governor September 8, 1996. Filed with Secretary of State September 11, 1996.]

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

SECTION 1. Section 1601 of the Fish and Game Code is amended to read:

1601. (a) Except as provided in this section, general plans sufficient to indicate the nature of a project for construction by, or on behalf of, any state or local governmental agency or any public utility shall be submitted to the department if the project will (1) divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit, (2) use material from the streambeds designated by the department, or (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake designated by the department. If an existing fish or wildlife resource may be substantially adversely affected by that construction, the department shall notify the governmental agency or public utility of the existence of the fish or wildlife resource together with a description thereof and shall propose reasonable modifications in the proposed construction that will allow for the protection and continuance of the fish or wildlife resource, including procedures to review the operation of those protective measures. The department's description of an existing fish or wildlife resource shall be specific and detailed and the department shall make available upon request the information upon which its conclusion is based that the resource may be substantially adversely affected. The proposals shall be submitted within 30 days of receipt of the plans, except that this time may be extended by mutual agreement. Upon determination by the department and after notice to the affected parties of the necessity for an onsite investigation or upon the request for an onsite investigation by the affected parties, the department shall make an onsite investigation of the proposed construction and shall make the investigation before it proposes any modifications.

(b) Within 14 days of receipt of the department's proposals, the affected agency or public utility shall notify the department in writing whether the proposals are acceptable, except that this time may be extended by mutual agreement. If the department's proposals are not acceptable to the affected agency or public utility,

the agency or public utility shall so notify the department. Upon request, the department shall meet with the affected agency or public utility within seven days of receipt of the notification, or at a time mutually agreed upon, for the purpose of developing proposals that are acceptable to the department and the affected agency or public utility. If mutual agreement is not reached at the meeting, a panel of arbitrators shall be established. The panel of arbitrators shall be established within seven days of the meeting, or at a time mutually agreed upon, and shall be composed of one representative of the department, one representative of the affected agency or public utility, and a third person mutually agreed upon, or if no agreement can be reached, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall act as chair of the panel. The panel may settle disagreements and make binding decisions regarding the fish and wildlife modifications. The arbitration shall be completed within 14 days from the day that the composition of the panel is established, unless the time is extended by mutual agreement. The expenses of the department representative shall be paid by the department; the expenses of the representative of the governmental agency or the public utility shall be paid by the governmental agency or the public utility; and the expenses of the chair of the panel shall be paid one-half by each party.

(c) A governmental agency or public utility proposing a project subject to this section shall not commence operations on that project until the department has found that the project will not substantially adversely affect an existing fish or wildlife resource or until the department's proposals, or the decisions of a panel of arbitrators, have been incorporated into the project. The department shall not condition the streambed alteration agreement on a project subject to this section on the receipt of another state or federal permit.

(d) The department shall determine and specify types of work, methods of performance, or remedial measures that are exempt from the operation of this section.

(e) With regard to any project that involves routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to, and agreement with, the department is not required subsequent to the initial notification and agreement, unless the work as described in the agreement is substantially changed or conditions affecting fish and wildlife resources substantially change, and the resources are adversely affected by the activity conducted under the agreement. This subdivision applies if notice to and agreement with the department was obtained prior to January 1, 1977.

(f) This section is not applicable to emergency work that is necessary to protect life or property; however, notification by the agency or public utility performing that emergency work shall be

made to the department within 14 days of the commencement of the emergency work.

(g) The department may enter into agreements with applicants for a term of not more than five years for the performance of operations on projects subject to this section. The terms of the agreement may be renegotiated at any time by mutual consent of the parties. Each agreement shall be renewed automatically by the department at the expiration of its term unless the department determines that there has been a substantial change in conditions. If there is a disagreement between the department and the applicant as to whether there has been a substantial change in conditions, the department and the applicant shall proceed to arbitration pursuant to subdivision (b). The department may charge a fee when the agreement is entered into and for each renewal, but may not charge an annual fee for this purpose.

SEC. 2. Section 1603 of the Fish and Game Code is amended to read:

1603. (a) It is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or use any material from the streambeds, without first notifying the department of that activity, except when the department has been notified pursuant to Section 1601. The department, within 30 days of receipt of that notice, or within the time determined by mutual written agreement, shall, when an existing fish or wildlife resource may be substantially adversely affected by the activity, notify the person of the existence of the fish and wildlife resource, together with a description thereof, and shall submit to the person its proposals as to measures necessary to protect fish and wildlife. Upon a determination by the department of the necessity for onsite investigation or upon the request for an onsite investigation by the affected parties, the department shall notify the affected parties that it shall make an onsite investigation of the activity and shall make the investigation before it proposes any measure necessary to protect the fish and wildlife. The department's description of an existing fish or wildlife resource shall be specific and detailed and the department shall make available upon request the information upon which its conclusion is based that the resource may be substantially adversely affected.

(b) Within 14 days of receipt of the department's proposals, the affected person shall notify the department in writing whether the proposals are acceptable, except that this time may be extended by mutual agreement. If the department's proposals are not acceptable to the affected person, that person shall so notify the department. Upon request, the department shall meet with the affected person within seven days of receipt of the notification or a time that may be mutually agreed upon for the purpose of developing proposals that are acceptable to the department and the affected person. If mutual

agreement is not reached at the meeting, a panel of arbitrators shall be established. However, the appointment of the panel may be deferred by mutual consent of the parties. The panel shall be established within seven days of the meeting and shall be composed of one representative of the department, one representative of the affected person, and a third person mutually agreed upon, or, if no agreement can be reached, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall act as panel chairperson. The panel may settle disagreements and make binding decisions regarding fish and wildlife modifications. The arbitration shall be completed within 14 days from the day that the composition of the panel is established, unless the time is extended by mutual agreement. The expenses of the department representative shall be borne by the department, the expenses of the representative of the person who diverts or obstructs the natural flow or changes the bed of any river, stream, or lake, or uses any material from the streambeds shall be borne by that person, and the expenses of the chairperson are to be paid one-half by each party.

(c) It is unlawful for any person to commence any activity affected by this section until the department has found that it will not substantially adversely affect an existing fish or wildlife resource or until the department's proposals, or the decisions of a panel of arbitrators, have been incorporated into the activity. If the department fails to act within 30 days of the submission of the notice, the person may commence the activity. The department shall not condition the streambed alteration agreement on the receipt of another state or federal permit.

(d) It is unlawful for any person to engage in an activity affected by this section, unless the activity is conducted in accordance with the department's proposals or the decisions of the panel of arbitrators.

(e) If an activity involves routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to and agreement with the department shall not be required subsequent to the initial notification and agreement unless the work as described in the agreement is substantially changed or conditions affecting fish and wildlife resources substantially change and the resources are adversely affected by the activity conducted under the agreement. This subdivision applies if notice to and agreement with the department was obtained prior January 1, 1977.

(f) This section is not applicable to emergency work that is necessary to protect life or property; however, notification by the person performing that emergency work shall be made to the department within 14 days of the commencement of the emergency work.

(g) The department may enter into agreements with applicants for a term of not more than five years for the performance of activities

subject to this section. The terms of the agreement may be renegotiated at any time by mutual consent of the parties. Each agreement shall be renewed automatically by the department at the expiration of its term unless the department determines that there has been a substantial change in conditions. If there is a disagreement between the department and the applicant as to whether there has been a substantial change in conditions, the department and the applicant shall proceed to arbitration pursuant to subdivision (b). The department may charge a fee when the agreement is entered into and for each renewal, but may not charge an annual fee for this purpose.

SEC. 3. Section 1603.3 is added to the Fish and Game Code, to read:

1603.3. The department shall provide all applicants for an agreement pursuant to Section 1601 or 1603 with a cover letter which sets forth all of the following information:

(a) The time period for review of the application.

(b) An explanation of the applicant's right to object to conditions proposed by the department.

(c) The time period within which objections may be made in writing by the applicant to the department.

(d) The time period within which the department is required to respond to the applicant's objections, and that the response must be in writing.

(e) An explanation of the right of the applicant to appeal the department's imposition of conditions for the agreement, including the right to arbitration.

(f) The procedures for arbitration and the timelines set forth in statute for using the arbitration procedure, including, but not limited to, information about the payment requirements for the arbitrator's fees.

(g) The current fee schedule for obtaining the agreement, including, but not limited to, an explanation of how the fees are calculated.

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First Extraordinary Session

CONCURRENT RESOLUTION

1995–96

FIRST EXTRAORDINARY SESSION

1996 RESOLUTION CHAPTER

First Extraordinary Session

RESOLUTION CHAPTER 1

Senate Concurrent Resolution No. 2—Relative to final adjournment of the 1995–96 First Extraordinary Session of the Legislature.

[Filed with Secretary of State September 16, 1996.]

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the 1995–96 First Extraordinary Session of the Legislature shall adjourn sine die at midnight on August 31, 1996.

1995–96

SECOND EXTRAORDINARY SESSION

EXTRAORDINARY SESSION SPECIAL RULES OF EFFECTIVENESS

Except for a statute calling an election, a statute providing for a tax levy or an appropriation calling for the usual current expenses of the state, and an urgency statute, all of which take effect immediately following enactment, a statute adopted during an extraordinary session takes effect on the 91st day following the adjournment of the special session (see subdivision (c) of Section 8 of Article IV of the California Constitution). The effective date of a concurrent resolution is the date it is filed with the Secretary of State.

The 1995–96 Second Extraordinary Session reconvened on January 3, 1996. The Assembly adjourned *sine die* on September 1, 1996; the Senate adjourned *sine die* on August 31, 1996. The 91st day after adjournment is December 1, 1996.

Please refer to the preceding year's Statutes and Amendments to the Codes for statutes enacted prior to the reconvening date.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

A P R O C L A M A T I O N
by the
Governor of the State of California

WHEREAS, an extraordinary occasion has arisen and now exists requiring that the Legislature of the State of California be convened in extraordinary session; now therefore,

I, PETE WILSON, Governor of the State of California, by virtue of the power and authority vested in me by Section 3 (b) Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California, on the 17th day of February, 1995, at a time appointed by each house of the Legislature of said day for the following purpose and to legislate upon the following subject:

To consider and act upon legislation relative to providing assistance to the County of Orange and each city, school district, agency or individual that, as of December 6, 1994, deposited funds with the Office of the Orange County Treasurer/ Tax Collector. And, to consider and act on legislation which will prevent future abuses of public investment dollars from occurring elsewhere in the State.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 7th day of February 1995.

Governor of California

ATTEST:

Secretary of State

STATUTES OF CALIFORNIA

1995–96

SECOND EXTRAORDINARY SESSION

1996 CHAPTERS

None.

CONCURRENT RESOLUTION

1995–96

SECOND EXTRAORDINARY SESSION

1996 RESOLUTION CHAPTER

RESOLUTION CHAPTER 1

Senate Concurrent Resolution No. 2—Relative to final adjournment of the 1995–96 Second Extraordinary Session of the Legislature.

[Filed with Secretary of State September 16, 1996.]

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the 1995–96 Second Extraordinary Session of the Legislature shall adjourn sine die at midnight on August 31, 1996.

1995–96

THIRD EXTRAORDINARY SESSION

EXTRAORDINARY SESSION SPECIAL RULES OF EFFECTIVENESS

Except for a statute calling an election, a statute providing for a tax levy or an appropriation calling for the usual current expenses of the state, and an urgency statute, all of which take effect immediately following enactment, a statute adopted during an extraordinary session takes effect on the 91st day following the adjournment of the special session (see subdivision (c) of Section 8 of Article IV of the California Constitution). The effective date of a concurrent resolution is the date it is filed with the Secretary of State.

The 1995–96 Third Extraordinary Session convened on January 4, 1996, and adjourned *sine die* on March 15, 1996. The 91st day after adjournment is June 14, 1996.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

A P R O C L A M A T I O N
by the
Governor of the State of California

WHEREAS, an extraordinary occasion has arisen and now exists requiring that the Legislature of the State of California be convened in extraordinary session; now therefore,

I, PETE WILSON, Governor of the State of California, by virtue of the power and authority vested in me by Section 3 (b) Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California, on the 3rd day of January, 1996, at 12:00 p.m. of said day for the following purpose and to legislate upon the following subject:

To consider and act upon legislation that would protect the economic interest of the state by continuing the registrations of methyl bromide and pentachlorophenol during the period that studies required by Chapter 669 of the Statutes of 1984 are being completed. These pest control agents are of vital interest to the agricultural, trade, workforce, utility and consumer sectors of the state.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 28th day of December 1995.

Governor of California

ATTEST:

Secretary of State

STATUTES OF CALIFORNIA

1995–96

THIRD EXTRAORDINARY SESSION

1996 CHAPTER

CHAPTER 1

An act to repeal and add Section 13127.32 of the Food and Agricultural Code, relating to economic poisons.

[Approved by Governor March 12, 1996. Filed with Secretary of State March 12, 1996.]

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

SECTION 1. The Legislature finds and declares that Chapter 1228 of the Statutes of 1991 was enacted to authorize the Director of Pesticide Regulation to extend the deadlines for submitting the mandatory health effects studies for pesticide products containing certain ingredients, including, among others, pentachlorophenol and methyl bromide under the Birth Defect Prevention Act of 1984. Chapter 1228 of the Statutes of 1991 also provided that no pesticide product containing those active ingredients for which the required studies have not been submitted by March 30, 1996, shall remain registered in this state after that date. This measure would extend the registration expiration deadlines for pentachlorophenol and methyl bromide, as specified. It is the intent of the Legislature to give notice to all interested parties that no further extensions of deadlines will be granted for either the submission of studies or for the expiration of registrations for pesticide products containing methyl bromide or pentachlorophenol for the purpose of complying with the act.

SEC. 2. It is the intent of the Legislature that the Department of Pesticide Regulation, in cooperation with the Department of Food and Agriculture, by July 1, 1996, review the current practices in the use of methyl bromide and consider the amendment of permit conditions or the promulgation of regulations to prevent any unreasonable risk of harm to employees and the general public, while accomplishing the objectives of soil, commodity, and structural fumigation. The review should include, but need not be limited to, injection depths, field barriers, buffer zone parameters, warning signs, field security, and the feasibility of strengthening local agency regulation where appropriate.

SEC. 3. Section 13127.32 of the Food and Agricultural Code is repealed.

SEC. 4. Section 13127.32 is added to the Food and Agricultural Code, to read:

13127.32. Notwithstanding any other provision of law, none of the following pesticide products shall remain registered in this state:

(a) Except as specified in subdivision (b), no pesticide product containing an active ingredient identified pursuant to subdivision (a) of Section 13127 for which the required studies have not been submitted by March 30, 1996, shall remain registered after that date.

(b) No pesticide product containing methyl bromide or pentachlorophenol for which the required studies have not been submitted by December 31, 1997, shall remain registered after that date.

SEC. 5. It is the intent of the Legislature that a thorough evaluation be completed no later than June 30, 1996, and upon the completion of that evaluation, that the Director of Pesticide Regulation propose to the Governor a process, including appropriate legislation that may be needed to implement the process, which will result in the dedication of a portion of the revenue of the Department of Pesticide Regulation to research, development, and outreach of reduced risk alternative pest management strategies for agriculture.

CONCURRENT RESOLUTIONS

1995–96

THIRD EXTRAORDINARY SESSION

1995–96 RESOLUTION CHAPTERS

RESOLUTION CHAPTER 1

Senate Concurrent Resolution No. 1—Relative to the Joint Rules for the 1995–96 Third Extraordinary Session.

[Filed with Secretary of State January 9, 1996.]

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Joint Rules of the Senate and Assembly for the 1993–94 Regular Session, except Joint Rules 51, 54, 55, 61, and the provision of Joint Rule 62(a) requiring that notice of a hearing of a bill be published in the Daily File, shall govern relations between the Senate and Assembly for the 1995–96 Third Extraordinary Session and that the extraordinary session shall be in recess during the same time periods when the 1995–96 Regular Session is in recess.

RESOLUTION CHAPTER 2

Assembly Concurrent Resolution No. 1—Relative to final adjournment of the 1995–96 Third Extraordinary Session of the Legislature.

[Filed with Secretary of State March 15, 1996.]

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the 1995–96 Third Extraordinary Session of the Legislature shall adjourn sine die on adjournment on March 15, 1996.
