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CHAPTER 358

An act to amend Section 35700.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 25, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 35700.5 of the Vehicle Code is amended to read:

35700.5. (a) The Department of Transportation, upon adoption of an ordinance or resolution that is in conformance with the provisions of this section by both the City of Long Beach and the City of Los Angeles, may issue a special permit to the operator of a vehicle, combination of vehicles, or mobile equipment, permitting the operation and movement of the vehicle, combination, or equipment, and its load, on the 3.66-mile portion of State Route 47 and State Route 103 known as the Terminal Island Freeway, between Willow Street in the City of Long Beach and Terminal Island in the City of Long Beach and the City of Los Angeles, and on the 2.1-mile portion of State Highway Route 1 that is between Blinn Avenue in the City of Los Angeles and Harbor Avenue in the City of Long Beach, if the vehicle, combination, or equipment meets all of the following criteria:

(1) The vehicle, combination of vehicles, or mobile equipment is used to transport intermodal cargo containers that are moving in international commerce.

(2) The vehicle, combination of vehicles, or mobile equipment, in combination with its load, has a maximum gross weight in excess of the maximum gross weight limit of vehicles and loads specified in this chapter, but does not exceed 95,000 pounds gross vehicle weight.

(3) (A) The vehicle, combination of vehicles, or mobile equipment conforms to the axle weight limits specified in Section 35550.

(B) The vehicle, combination of vehicles, or mobile equipment conforms to the axle weight limits in Section 35551, except as specified in subparagraph (C).

(C) Vehicles, combinations of vehicles, or mobile equipment that impose more than 80,000 pounds total gross weight on the highway by any group of two or more consecutive axles, exceed 60 feet in length between the extremes of any group of two or more consecutive axles, or have more than six axles shall conform to weight limits that shall be determined by the Department of Transportation.

(b) The permit issued by the Department of Transportation shall be required to authorize the operation or movement of a vehicle, combination of vehicles, or mobile equipment described in

subdivision (a). The permit shall not authorize the movement of hazardous materials or hazardous wastes, as those terms are defined by local, state, and federal law. The following criteria shall be included in the application for the permit:

(1) A description of the loads and vehicles to be operated under the permit.

(2) An agreement wherein each applicant agrees to be responsible for all injuries to persons and for all damage to real or personal property of the state and others directly caused by or resulting from the operation of the applicant's vehicles or combination of vehicles under the conditions of the permit. The applicant shall agree to hold harmless and indemnify the state and all its agents for all costs or claims arising out of or caused by the movement of vehicles or combination of vehicles under the conditions of the permit.

(3) The applicant shall provide proof of financial responsibility that covers the movement of the shipment as described in subdivision (a). The insurance shall meet the minimum requirements established by law.

(4) An agreement to carry a copy of the permit in the vehicle at all times and furnish the copy upon request of an employee of the Department of the California Highway Patrol or the Department of Transportation.

(5) An agreement to place an indicia, developed by the Department of Transportation, in consultation with the Department of the California Highway Patrol, upon the vehicle identifying it as a vehicle possibly operating under this section. The indicia shall be displayed in the lower right area of the front windshield of the power unit. The Department of Transportation may charge a fee to cover the cost of producing and issuing this indicia.

(c) The permit issued pursuant to subdivision (a) shall be valid for one year. The permit may be canceled by the Department of Transportation for any of the following reasons:

(1) The failure of the applicant to maintain any of the conditions required pursuant to subdivision (b).

(2) The failure of the applicant to maintain a satisfactory rating, as required by Section 34501.12.

(3) A determination by the Department of Transportation that there is sufficient cause to cancel the permit because the continued movement of the applicant's vehicles under the permit would jeopardize the safety of the motorists on the roadway or result in undue damage to the highways listed in this section.

(d) The Department of Transportation may charge a fee to cover the cost of issuing a permit pursuant to subdivision (a).

(e) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2003, deletes or extends that date.

CHAPTER 359

An act to amend Sections 801, 802, 803, 803.1, 803.2, and 805 of, and to add Section 2027 to, the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 801 of the Business and Professions Code is amended to read:

801. (a) Every insurer providing professional liability insurance to a person who holds a license, certificate or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except as provided in subdivisions (b), (c), and (d)) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement over thirty thousand dollars ($30,000), or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars

($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Board of Dental Examiners of California as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

SEC. 2. Section 802 of the Business and Professions Code is amended to read:

802. (a) Every settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services, by a person who holds a license, certificate or other similar authority from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2) or the Osteopathic Initiative Act who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of

the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(b) Every settlement over thirty thousand dollars ($30,000), or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services, by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2, or the Osteopathic Initiative Act, who does not possess professional liability insurance as to the claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(c) Every settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a marriage, family, and child counselor or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990), who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report

shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage, family, and child counselor or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in that compliance is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

SEC. 3. Section 803 of the Business and Professions Code is amended to read:

803. (a) (1) Except as provided in paragraph (2), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from the Board of Behavioral Science Examiners or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court which rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(2) For purposes of a physician and surgeon who has committed a crime, or is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court which rendered the judgment shall report that fact to the agency that issued the license.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) shall send a complete report to the Medical Board of California as to any judgment of a claim for damages for death or personal injury caused by that licensee's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 calendar days after entry of judgment.

(c) Notwithstanding any other provision of law, the Medical Board of California and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information

received pursuant to subdivision (a) regarding felony convictions of, and judgments against, a physician and surgeon or doctor of podiatric medicine. The Division of Medical Quality and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

SEC. 4. Section 803.1 of the Business and Professions Code is amended to read:

803.1. (a) Notwithstanding any other provision of law, the Board of Podiatric Medicine shall disclose to an inquiring member of the public information regarding the status of the license of a licensee and any enforcement actions taken against a licensee by either board or by another state or jurisdiction, including, but not limited to, all of the following:

(1) Temporary restraining orders issued.

(2) Interim suspension orders issued.

(3) Limitations on practice ordered by the board.

(4) Public letters of reprimand issued.

(5) Infractions, citations, or fines imposed.

(b) Notwithstanding any other provision of law, the Medical Board of California shall disclose to an inquiring member of the public information regarding the status of the license of a licensee, any malpractice judgments, any arbitration awards, or any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for a medical disciplinary cause or reason, and any enforcement actions taken against a licensee by the board or by another state or jurisdiction, including, but not limited to, any of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(c) The Medical Board of California and the Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

SEC. 5. Section 803.2 of the Business and Professions Code is amended to read:

803.2. Every entry of settlement agreement over thirty thousand dollars ($30,000), or judgment or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by, or alleging, the negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, when that judgment, settlement agreement, or arbitration award is entered against, or paid by, the employer of that licensee and not the

licensee himself or herself, shall be reported to the appropriate board by the entity required to report the information in accordance with Sections 801, 801.1, 802, and 803 as an entry of judgment, settlement, or arbitration award against the negligent licensee.

"Employer" as used in this section means a professional corporation, a group practice, a health care facility or clinic licensed or exempt from licensure under the Health and Safety Code, a licensed health care service plan, a medical care foundation, an educational institution, a professional institution, a professional school or college, a general law corporation, a public entity, or a nonprofit organization that employs, retains, or contracts with a licensee referred to in this section. Nothing in this section shall be construed to authorize the employment of, or contracting with, any licensee in violation of Section 2400.

SEC. 6. Section 805 of the Business and Professions Code is amended to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) "Peer review body" includes:

(A) A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare program as an ambulatory surgical center.

(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a nonprofit hospital service plan regulated under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(C) Any medical, psychological, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class which functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, podiatrist, clinical psychologist, or dentist. "Licentiate" also includes a person authorized to practice medicine pursuant to Section 2113.

(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff

privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) "Denial or termination of staff privileges, membership, or employment" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, when the action is based on medical disciplinary cause or reason.

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct which is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency whenever any of the following actions are taken as a result of a determination of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

In addition to the duty to report as set forth in paragraphs (1), (2), and (3), the peer review body also has a duty to report under this section a licentiate's resignation or leave of absence from membership, staff, or employment following notice of an impending investigation based on information indicating medical disciplinary cause or reason.

The 805 report shall be filed within 15 days after the effective date of the denial, termination, restriction, resignation, or leave of absence, or after the exhaustion of administrative procedures, without regard to any filing for judicial review.

An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name of the licentiate involved, a description of the facts and

circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

In those instances where another peer review body is required to file an 805 report, a health care service plan or nonprofit hospital service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason.

(c) The reporting required herein shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(d) The Medical Board of California, the Osteopathic Medical Board of California, and the Board of Dental Examiners shall disclose reports as required by Section 805.5.

(e) An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.

(f) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(g) An intentional failure to make a report pursuant to this section is a public offense punishable by a fine not to exceed ten thousand dollars ($10,000).

(h) A failure by the administrator of any peer review body or the chief executive officer or administrator of any health care facility who is designated to transmit a report pursuant to this section whether or not the failure is intentional is punishable by a civil penalty not exceeding five thousand dollars ($5,000) per violation payable to the board with jurisdiction over the licensee in any action brought by the Attorney General.

SEC. 7. Section 2027 is added to the Business and Professions Code, to read:

2027. (a) The board shall post on the Internet the following information regarding licensed physicians and surgeons:

(1) With regard to the status of the license, whether or not the licensee is in good standing, subject to a temporary restraining order (TRO), or subject to an interim suspension order (ISO).

(2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board of another state or jurisdiction.

(3) Any felony convictions reported to the board after January 3, 1991.

(4) All current accusations filed by the Attorney General.

(5) Any malpractice judgment or arbitration award reported to the board after January 1, 1993.

(6) Any hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason.

(7) Appropriate disclaimers and explanatory statements to accompany the above information.

(b) The board shall provide links to other web sites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Section 651. The board may provide links to other web sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed physicians and surgeons.

SEC. 8. The Medical Board of California is authorized to expend twenty-one thousand dollars ($21,000) from the Contingent Fund of the Medical Board of California during the 1997–98 fiscal year for purposes of the implementation of this act.

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.

CHAPTER 360

An act to amend Section 926.17 of, and to amend and add Section 926.15 of, the Government Code, relating to claims against the state.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 926.15 is added to the Government Code, to read:

926.15. (a) This section shall be known and cited as the California Prompt Payment Act. It is the intent of the Legislature that this

section requires state agencies to pay properly submitted, undisputed, invoices within 45 days of receipt, or automatically calculate and pay the appropriate late payment penalties.

(1) A state agency that acquires property or services pursuant to a contract with a business, including any approved change order or contract amendment, shall make payment to the person or business on the date required by the contract or be subject to a late payment penalty.

(2) Except in the event of an emergency as provided in subdivision (k), effective January 1, 1998, the late payment penalties provided for in this section may not be waived, altered, or limited by a state agency acquiring property or services pursuant to a contract, or by any person or business contracting with a state agency to provide property or services. Nothing in this section shall be construed to require any person or business that has contracted with a state agency to have to submit a claim or invoice for payment of an interest penalty fee.

(b) Unless the context otherwise requires, the following definitions shall govern the construction of this section.

(1) "Claim schedule" means a schedule of invoices prepared and submitted by a state agency to the Controller for payment to the named claimant.

(2) "Invoice" means a bill or claim that requests payment on a contract under which a state agency acquires property or services.

(3) "Medi-Cal program" means the program established pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(4) "Nonprofit public benefit corporation" means a corporation, as defined by subdivision (b) of Section 5046 of the Corporations Code, that has registered with the Department of General Services as a small business.

(5) "Reasonable cause" means a determination by a state agency that any of the following conditions are present:

(A) There is a discrepancy between the invoice, or claimed amount, and the provisions of the contract.

(B) There is a discrepancy between the invoice, or claimed amount, and either the contractor's actual delivery of property or services to the state or the state's acceptance of those deliveries.

(C) Additional evidence supporting the validity of the invoice, or claimed amount, is required to be provided to the state agency by the contractor.

(D) The invoice has been improperly executed, or needs to be corrected by the contractor.

(6) "Required payment approval date" means the date on which payment is due as specified in a contract or, if a specific date is not established by the contract, 30 calendar days following the date upon which an undisputed invoice is "received by a state agency."

(7) "Received by a state agency" means the date an invoice is delivered to the state location or party specified in the contract or, if a state location or party is not specified in the contract, wherever otherwise specified by the state agency.

(8) "Revolving fund" means a fund established pursuant to Article 5 (commencing with Section 16400) of Division 4 of Title 2.

(9) "Small business" means a business certified as a "small business" in accordance with subdivision (c) of Section 14837.

(10) "Small business" and "nonprofit organization" mean, in reference to providers under the Medi-Cal program, a business or organization that meets all of the following criteria:

(A) The principal office is located in California.

(B) The officers, if any, are domiciled in California.

(C) If a small business, it is independently owned and operated.

(D) The business or organization is not dominant in its field of operation.

(E) Together with any affiliates, the business or organization has gross receipts from business operations that do not exceed three million dollars ($3,000,000) per year, except that the Director of Health Services may increase this amount if the director deems that this action would be in furtherance of the intent of this section.

(c) Except where payment is made directly by a state agency pursuant to subdivision (f), any undisputed invoice received by a state agency shall be submitted to the Controller for payment by the required payment approval date. A state agency may dispute an invoice submitted by a contractor for reasonable cause, provided that the state agency so notifies the contractor within 15 working days from receipt of the invoice, or delivery of the property or services, whichever is later. No state employee shall dispute an invoice, on the basis of minor or technical defects, in order to circumvent or avoid the general intent or any of the specific provisions of this section.

(d) Except as otherwise provided in this section, to avoid late payment penalties, the maximum timeframe from state agency receipt of an undisputed invoice to issuance of a warrant for payment is 45 calendar days, including not more than 30 calendar days from the state agency to submit a correct claim schedule to the Controller, and not more than 15 calendar days for the Controller to issue the warrant.

(e) This section shall not apply to claims for reimbursement for health care services provided under the Medi-Cal program, unless the Medi-Cal health care services provider is a small business or nonprofit organization. In applying this section to claims submitted to the state, or its fiscal intermediary, by providers of services or equipment under the Medi-Cal program, payment for claims shall be due 30 days after a claim is received by the state or its fiscal intermediary, unless reasonable cause for nonpayment exists. With regard to Medi-Cal claims, reasonable cause shall include review of claims to determine medical necessity, review of claims for providers

subject to special prepayment fraud and abuse controls, and claims that require review by the fiscal intermediary or State Department of Health Services due to special circumstances. Claims requiring special review as specified above shall not be eligible for a late payment penalty.

(f) State agencies shall pay applicable penalties, without requiring that the contractor submit an additional invoice for these amounts, whenever the state agency fails to submit a correct claim schedule to the Controller by the required payment approval date. The penalty shall cease to accrue on the date the state agency submits the claim schedule to the Controller for payment, and shall be paid for out of the state agency's funds. If the contractor is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the state agency shall pay to the contractor a penalty of 0.25 percent of the amount due, per calendar day, from the required payment date. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars ($500,000).

For all other businesses, the state agency shall pay a penalty at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars ($75) or less, the penalty shall be waived and not paid by the state agency. On an exception basis, state agencies may avoid payment of penalties, for failure to submit a correct claim schedule to the Controller by the required payment approval date, by paying the contractor directly, from the state agency's revolving fund within 45 calendar days following the date upon which an undisputed invoice is received by the state agency.

(g) The Controller shall pay contractors within 15 calendar days of receipt of a correct claim schedule from the state agency. If the Controller fails to make payment within 15 calendar days of receipt of the claim schedule from a state agency, the Controller shall pay applicable penalties to the contractor without requiring that the contractor submit an invoice for such amounts. Penalties shall cease to accrue on the date full payment is made, and shall be paid for out of the Controller's funds. If the contractor is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the Controller shall pay to the contractor a penalty of 0.25 percent of the amount due, per calendar day, from the 16th calendar day following receipt of the claim schedule from the state agency. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars ($500,000). For all other businesses, the Controller

shall pay penalties at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars ($75) or less, the penalty shall be waived and not paid by the Controller.

(h) State agencies shall avoid seeking any additional appropriation to pay penalties which accrue as a result of the agency's failure to make timely payments as required by this section. Any state agency which requests that the Legislature make a deficiency appropriation for the agency shall identify what portion, if any, of the requested amount is necessitated because of any penalties imposed by this section.

(i) On an annual basis, within 90 calendar days following the end of each fiscal year, state agencies shall provide the Director of General Services with a report on late payment penalties that were paid by the state agency in accordance with the provisions of this section during the preceding fiscal year.

At a minimum, the report shall identify the total number and dollar amount of late payment penalties paid. State agencies may, at their own initiative, provide the director with other relevant performance measures. The director shall prepare a report listing the number and total dollar amount of all late payment penalties paid by each state agency during the preceding fiscal year, together with other relevant performance measures, and shall make such information available to the public.

(j) State agencies shall encourage contractors to promptly pay their subcontractors and suppliers, especially those that are small businesses. In furtherance of this policy, state agencies shall utilize expedited payment processes to enable faster payment by prime contractors to their subcontractors and suppliers, and shall promptly respond to any subcontractor or supplier inquiries regarding the status of payments made to prime contractors.

(k) (1) Except in the case of a contract with a certified small business, a nonprofit organization or a nonprofit public benefit corporation, if an invoice from a business under a contract with the Department of Forestry and Fire Protection would become subject to late payment penalties during the annually declared fire season, as declared by the Director of Forestry and Fire Protection, then the required payment approval date shall be extended by 30 calendar days.

(2) No nonprofit public benefit corporation shall be eligible for a late payment penalty if a state agency fails to make timely payment because no Budget Act has been enacted.

(3) If the Director if Finance determines that a state agency or the Controller is unable to promptly pay an invoice as provided for by this section due to a major calamity, disaster, or criminal act, then otherwise applicable late payment penalty provisions contained in subdivision (g) shall be suspended except as they apply to a

contractor which is either a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program. The suspension shall remain in effect until the Director of Finance determines that the suspended late payment penalty provisions of this section should be reinstated.

(*l*) Section 926.10 shall not apply to any contract covered by this section.

SEC. 2. Section 926.15 of the Government Code is amended to read:

926.15. (a) Any state agency which, without reasonable cause, fails to make any payment within 30 days of the required payment date to a small business or a nonprofit organization awarded a contract with the agency to supply property or services, for an undisputed claim which was properly executed by the claimant and submitted to the agency, shall pay a penalty of 0.25 percent of the amount due, per day, from the 31st day after the required payment date. In the event that the contracting state agency properly executes the claim and forwards the claim to the Controller, and the Controller fails to make payment within 30 days after receipt of a properly executed claim, the Controller shall pay a penalty of 0.25 percent of the amount due, per day, from the 31st day after the Controller's receipt of the claim. A nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars ($500,000).

(b) In applying this section to claims submitted to the state, or to its fiscal intermediary, by providers of services or equipment under the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code, payment for claims shall be due 30 days after a claim is received by the state or its fiscal intermediary, unless reasonable cause for nonpayment exists. With regard to Medi-Cal claims "reasonable cause" shall include review of claims to determine medical necessity, review of claims for providers subject to special prepayment fraud and abuse controls, and claims which require review by the fiscal intermediary or department due to special circumstances. Claims requiring special review as specified above shall not be eligible for a late payment penalty.

(c) Unless otherwise specified, for the purposes of this section, "reasonable cause" shall include review of a claim which is improperly executed by the claimant or for which additional evidence of the validity of the claim is required. If it is determined by the state agency that a claim was improperly executed or that additional evidence of the validity of the claim is required, the small business or nonprofit organization shall be notified within 15 working days of receipt by the state agency that the claim needs correction

or that additional evidence of validity is required. The required payment date for claims requiring correction or additional information establishing validity shall be 30 days from the date the corrected claim is received by the state agency.

(d) For the purposes of this section, "required payment date" means any of the following:

(1) The date on which payment is due under the terms of the contract.

(2) If a specific date is not established by contract, the date upon which an invoice is received, if the invoice specifies payment is due upon receipt.

(3) If a specific date is not established by contract or invoice, 30 days after receipt of a proper invoice for the amount of the payment due.

(e) For the purposes of this section, the terms "small business" and "nonprofit organization" shall be defined by regulations of the Department of General Services which implement this section.

(f) Any penalty required to be paid by a state agency pursuant to this section shall be paid by the Controller out of the state agency's budget.

(g) Any state agency which requests that the Legislature make a deficiency appropriation for the agency shall identify what part of the requested amount is necessitated because of any penalties imposed by this section.

(h) Accrual of the penalty provided by subdivision (a) shall cease for a state agency on the date a properly executed claims schedule for the claim is submitted to the Controller, and for the Controller on the date the claim is paid. For purposes of this section, the terms "small business" and "nonprofit organization," in referring to providers under the Medi-Cal program, mean a business or organization:

(1) Where the principal office is located in California.

(2) Where the officers, if any, are domiciled in California.

(3) Which, if a small business, is independently owned and operated.

(4) Which is not dominant in its field of operation.

(5) Which, together with any affiliates, has gross receipts from business operations which do not exceed three million dollars ($3,000,000) per year, except that the State Director of Health Services may increase this amount if the director deems that this action would be in furtherance of the intent of this section.

(i) No nonprofit public benefit corporation shall be eligible for a late payment penalty if the state agency has failed to make timely payment because no Budget Act has been enacted. For the purposes of this section, "nonprofit public benefit corporation" means a corporation as defined by subdivision (b) of Section 5046 of the Corporations Code which has registered with the Department of General Services as a small business.

(j) The late payment penalties provided for in this section may not be waived, altered, or limited by a state agency acquiring property or services pursuant to a contract entered into on or after January 1, 1998, or by any person or business contracting on or after that date with a state agency to provide property or services. Nothing in this section shall be construed to require any person or business that has contracted with a state agency to have to submit a claim or invoice for payment of an interest penalty fee.

SEC. 3. Section 926.17 of the Government Code is amended to read:

926.17. (a) (1) A state agency that acquires property or services pursuant to a contract, including any approved change order, with a business shall pay for each complete delivered item of property or service on the date required by contract between the business and agency or be subject to an interest penalty fee. If no date for payment is specified by contract, the state agency shall pay the contractor directly, if authorized to do so, within 50 calendar days after the postmark date of the invoice. If the state agency is not authorized to pay the contractor directly, the state agency shall forward the invoice for payment to the Controller within 35 calendar days after the postmark date of the invoice. The Controller shall pay the contractor within 15 calendar days of receipt of the invoice from the state agency.

(2) If, due to insufficient funds, a state agency is unable to meet the payment deadlines provided for in paragraph (1) under a contract for goods or services needed due to a natural disaster, including, but not limited to, fires, floods, or earthquakes, payment under the contract shall not be due until 30 calendar days after the agency has received sufficient funds to pay the contractor.

(3) If, by applying paragraphs (1) and (2), a payment under a contract with the Department of Forestry and Fire Protection would become due during the annually declared fire season, as declared by the Director of Forestry and Fire Protection, the payment shall not be due until 30 calendar days after the date upon which it would otherwise have been due.

(4) The acquisition of property includes the rental of real or personal property.

(b) (1) An interest penalty fee shall accrue and be charged on payments overdue under subdivision (a) at a rate of 1 percent above the rate accrued on June 30th of the prior year by the Pooled Money Investment Account, but not to exceed 15 percent.

The interest penalty fee shall begin on the day after payment is due if the payment due date is specified by contract. If no payment date is specified by contract and the state agency is authorized to pay the contractor directly, the interest penalty fee shall begin to accrue on the 51st calendar day after the postmark date of the invoice and shall be paid for out of the contracting state agency's funds.

If no payment date is specified by contract and the state agency is not authorized to pay the contractor directly and the state agency has not forwarded the invoice to the Controller's office for payment by the 35th calendar day after the postmark date of the invoice, an interest penalty fee shall begin to accrue on the 36th calendar day after the postmark date of the invoice and shall be paid for out of the contracting state agency's funds. The state agency's liability ends on the date a properly submitted invoice is received by the Controller.

After the invoice is forwarded to the Controller's office from the contracting state agency, an interest penalty fee shall begin to accrue on the 16th calendar day after receipt of a properly submitted invoice by the Controller's office and shall be paid for out of the Controller's funds. The interest penalty fee ceases to accrue on the date full payment is made.

(2) A state agency shall not seek additional appropriations to pay interest that accrues as a result of an agency's failure to make payments as required by subdivision (a).

(3) When a state agency is required by this section to pay a penalty, it shall be presumed that the fault is that of the head of the state agency and, in such cases, the head of the state agency shall submit to the Legislature a written report on the actions taken to correct the problem.

(c) A court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section where it is found that the state agency has violated this section. The costs and fees shall be paid by the state agency at fault and shall not become a personal economic liability of any public officer or employee thereof.

(d) If the state agency's failure to make payment as required by subdivision (a) is the result of a dispute between the agency and the business over the amount due or over compliance with the contract, the 35 and 50 calendar days specified in subdivision (a) shall begin on the date the dispute is settled either by mutual agreement between the contracting parties or by receipt of a corrected invoice. A state agency may dispute an invoice if the state agency so notifies the contractor within 15 calendar days of receipt of the invoice.

(e) For the purposes of this section, "invoice" means a document seeking payment on a contract and that contains a detailed list of goods shipped or services rendered, with an accounting of all costs.

(f) This section shall not apply to claims for reimbursement for health care services provided under the Medi-Cal program, as established pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(g) Section 926.10 shall not apply to any contract covered by this section.

(h) This section shall not apply to any contract covered by Section 926.15.

(i) A state agency shall not make interest penalty fee payments of less than five dollars ($5).

(j) The provisions of subdivision (a) or (b) may not be waived, altered, or limited by the state agency acquiring property or services pursuant to a contract entered into on or after January 1, 1998, or by any person or business contracting on or after that date with a state agency to provide property or services.

(k) Nothing in this section shall be construed to require any person or business that has contracted with a state agency to have to submit a claim or invoice for payment of an interest penalty fee.

SEC. 4. Section 1 of this act shall become operative only if Senate Bill 1132 of the 1997–98 Regular Session is enacted, in which case Section 2 of this act shall not become operative. If Senate Bill 1132 is not enacted then Section 1 of this act shall not become operative.

SEC. 5. Section 2 of this act shall become operative only if Senate Bill 1132 of the 1997–98 Regular Session is not enacted, in which case Section 1 of this act shall not become operative. If Senate Bill 1132 is enacted, then Section 2 of this act shall not become operative.

CHAPTER 361

An act to add Section 25160.1 to the Health and Safety Code, relating to hazardous waste.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

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

(a) The existing system of tracking the shipment of manifested hazardous waste relies on a waste code system that was developed in the early 1980s.

(b) The hazardous waste system in this state has evolved a complex set of criteria for the identification of the different types of RCRA and non-RCRA hazardous waste. However, the existing list of hazardous waste codes for labeling, manifesting, and tracking those wastes does not bear any correlation with those differing hazardous waste identification criteria.

(c) To ensure the continued preservation of human health and the environment from potential adverse consequences due to the mismanagement of hazardous waste, the state must develop a simple and consistent hazardous waste code system that is based on the criteria for the identification of RCRA and non-RCRA hazardous wastes.

(d) The new hazardous waste code identification system must be designed to balance reasonable and justified information needs with the need for a simple system, taking into consideration input from interested parties.

SEC. 2. Section 25160.1 is added to the Health and Safety Code, to read:

25160.1. (a) On or before December 31, 1998, the department shall revise the hazardous waste code identification system established in Appendix XII of Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations. The revised hazardous waste code identification system shall meet the requirements of subdivision (b) and shall be proposed and adopted by the department in accordance with the following procedures:

(1) On or before March 31, 1998, the department shall make available for informal public review a proposed new hazardous waste code identification system that meets the requirements of subdivision (b).

(2) On or before April 30, 1998, the department shall convene a workshop to receive public comment on the proposed new hazardous waste code identification system.

(3) Not later than June 30, 1998, the department shall issue a notice of proposed action pursuant to Section 11346.2 of the Government Code that proposes the changes in Title 22 of the California Code of Regulations that are necessary to adopt the new hazardous waste code identification system.

(4) On or before November 30, 1998, the department shall adopt the new hazardous waste code identification system and transmit the necessary regulatory changes to the Office of Administrative Law for review.

(b) The revised hazardous waste code identification system adopted pursuant to subdivision (a) shall meet all of the following requirements:

(1) RCRA hazardous wastes shall be identified by the same hazardous waste code identification designations that are given to those hazardous wastes by the RCRA hazardous waste code system adopted pursuant to the federal act.

(2) Hazardous wastes that are identified pursuant to RCRA hazardous waste identification criteria, but are regulated as a hazardous waste because this state does not recognize a RCRA exclusion or exemption, shall be identified by the RCRA hazardous waste code with additional modifying symbols that signify that they are regulated as hazardous waste pursuant to this chapter.

(3) Non-RCRA hazardous wastes shall be identified by hazardous waste code identification designations that are patterned after, and are consistent with, federal waste code identification designations and shall be based on the criteria that causes the waste to be regulated as a hazardous waste in this state.

(4) Notwithstanding the requirements of paragraphs (1), (2), and (3), the department may propose and adopt additional modifications to the hazardous waste code identification system if the department determines that those additional modifications are necessary and essential to provide any one of the following:

(A) Significant benefit to the protection of human health or the environment.

(B) Significant benefit to compliance and enforcement activities.

(C) Significant additional assurance that hazardous wastes are properly managed.

(c) To facilitate implementation of the revised hazardous waste code identification system adopted pursuant to this section, the department shall do all of the following:

(1) Allow for a reasonable transition period, not to exceed one year, for the public to comply with the revised hazardous waste code identification system.

(2) Adopt a regulatory procedure for the amendment of existing permits, registrations, licenses, certifications, and other authorizations that have been issued by the department to allow the revised hazardous waste code identification system to be used by facilities with existing authorizations that refer to, or incorporate, the old hazardous waste code identification system, subject to both of the following limitations:

(A) The regulatory procedure will not change the type or amount of hazardous waste that persons are authorized to treat, store, transfer, dispose of, or otherwise handle in accordance with this chapter.

(B) The regulatory procedure will not require individual modification or amendments to individual facility permits, registrations, licenses, certifications, or other authorizations solely for the purpose of reflecting the revised hazardous waste code identification system.

(3) Conduct a public education, outreach, and notification program to ensure that users of the hazardous waste code identification system are reasonably notified of and understand the changes made to the system pursuant to this section.

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 362

An act to amend Sections 8477 and 8495 of, to add Section 8495.1 to, and to repeal Sections 8477.3, 8478, and 8478.5 of, the Education Code, relating to child care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 8477 of the Education Code is amended to read:

8477. (a) It is the intent of the Legislature that funds be appropriated for the minor renovation and repair of publicly owned buildings as necessary to meet state licensing standards, and for the state purchase of relocatable child care and development facilities for the purpose of providing extended day care services pursuant to this article, for lease to qualifying agencies in geographic areas with no available child care and development facilities and, as to any child care and development facility acquired by a qualifying agency with funds not including state funds, for the purpose of reimbursement of initial utility service installation costs. This section is applicable only to the proceeds from the sale of bonds allocated by the State Allocation Board pursuant to subdivision (e) of Section 100020.

(b) No relocatable child care and development facility owned by the state shall be placed on privately owned land except in those areas of the state where the Superintendent of Public Instruction determines there is no available space on publicly owned land and where there are no available child care and development facilities.

(c) The Superintendent of Public Instruction shall establish the qualifications to determine the eligibility of extended day care agencies to lease relocatable facilities under this section.

(d) The Superintendent of Public Instruction shall adopt rules establishing priorities for the acquisition and leasing of facilities to agencies that will most benefit children needing extended day care services. First priority shall be given to programs that are operated in school districts that have unhoused pupils, as determined under state standards established pursuant to Chapter 22 (commencing with Section 17700) of Part 10, and have developed a plan to provide extended day care services in a cost-effective manner. Each lessee shall be required to demonstrate that program operations in relocatable facilities are primarily for extended day care services

which comply with cost-effective minimum program standards established by the superintendent.

(e) Although primary use of relocatable facilities shall be for extended day care programs, those facilities may be used for other purposes if the following conditions are met:

(1) The alternative use of the facility does not infringe upon the accessibility of extended day care programs.

(2) The State Department of Education authorizes alternative use as being compatible with extended day care programs.

(f) The State Allocation Board, with the advice of the Superintendent of Public Instruction, may do all of the following:

(1) Establish any procedures and policies in connection with the administration of this section that it deems necessary.

(2) Adopt any rules and regulations for the administration of this section requiring those procedures, forms, and information that it deems necessary.

(3) Have constructed, furnished, equipped, or otherwise require whatever work is necessary to place relocatable extended day care services facilities where needed.

(g) The board shall lease relocatable facilities to qualifying extended day care services agencies and shall charge rent of one dollar ($1) per year. The board shall require lessees to undertake all necessary maintenance, repairs, renewal, and replacement to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee. Neither the board nor the state shall assume any responsibility for utility services costs other than initial installation costs reimbursed under this article, and the agency shall provide adequate safeguards to protect the state's interest in this regard.

(h) The board shall require lessees to insure at their own expense for the benefit of the state, any leased relocatable facility that is the property of the state, against any risks, including liability from the use thereof, in the amounts the board deems necessary to protect the interests of the state. Neither the board nor the state shall assume any responsibility for utility services costs other than initial installation costs reimbursed under this article, and the agency shall provide adequate safeguards to protect the state's interest in this regard.

(i) No relocatable facilities shall be made available to an agency unless the agency furnishes evidence, satisfactory to the board, that the agency has no other facility available for rental, lease, or purchase in the geographic service area that is economically or otherwise feasible.

(j) The board shall have prepared for its use, performance specifications for relocatable facilities and bids for their construction that can be solicited from more than one responsible bidder. The board shall from time to time solicit bids from, and award to, the lowest responsible competitive bidder, contracts for the construction

or purchase of relocatable facilities that have been approved for lease to eligible extended day care services agencies.

(k) If at any time the board determines that a lessee's need for particular relocatable facilities that were made available to the lessee pursuant to this article has ceased, the board may take possession of the relocatable facilities and may lease them to other eligible contracting agencies, or, if there is no longer a need for the relocatable facilities, the board may dispose of them to public or private parties in the manner it deems to be in the best interests of the state.

(*l*) If a lessee uses a particular relocatable facility for only a portion of the year, the board may enter into a second lease with a public or private party for the use of that facility for the portion of the year during which the facility would otherwise be unused, in the manner it deems to be in the best interests of the state. The lessee shall be subject to subdivisions (f) and (h).

SEC. 2. Section 8477.3 of the Education Code is repealed.

SEC. 3. Section 8478 of the Education Code is repealed.

SEC. 4. Section 8478.5 of the Education Code is repealed.

SEC. 5. Section 8495 of the Education Code is amended to read:

8495. (a) There is hereby created in the State Treasury the State Child Care Capital Outlay Fund. Notwithstanding Section 13340 of the Government Code, all moneys in the State Child Care Capital Outlay Fund, including moneys deposited in that fund from any source whatsoever, shall be continuously appropriated without regard to fiscal year for expenditure pursuant to the provisions of this article. The fund shall be administered by the State Allocation Board, which may authorize the expenditure of any moneys in the fund for capital outlay projects pursuant to Section 8277.7 or this article. Funds in the State Child Care Facilities Fund set aside for the purposes of providing extended day care facilities pursuant to Section 8477 shall be transferred to the State Child Care Capital Outlay Fund upon the effective date of the act amending this section in the 1997–98 Regular Session.

(b) The Superintendent of Public Instruction shall establish the qualifications to determine the eligibility of child care and development agencies, including those that provide preschool and extended day care services, to lease relocatable facilities under this section.

(c) Although primary use of relocatable facilities shall be for child care and development programs, including preschool and extended day care programs, those facilities may be used for other purposes if the following conditions are met:

(1) The alternative use of the facility does not infringe upon the accessibility of child care and development programs including preschool or extended day care programs.

(2) The Superintendent of Public Instruction authorizes alternative use as being compatible with child care and development programs, including preschool or extended day care programs.

(d) The State Allocation Board, with the advice of the Superintendent of Public Instruction, may do all of the following:

(1) Establish any procedures and policies in connection with the administration of this section that it deems necessary.

(2) Adopt any rules and regulations for the administration of this section requiring those procedures, forms, and information that it deems necessary.

(3) Have constructed, furnished, equipped, or otherwise require whatever work is necessary to place relocatable facilities for child care and development services, including preschool and extended day care services where needed.

(e) The board shall lease relocatable facilities to qualifying agencies providing child care and development services, including preschool or extended day care services, and shall charge rent of one dollar ($1) per year. The board shall require lessees to undertake all necessary maintenance, repairs, renewal, and replacement to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee. Neither the board nor the state shall assume any responsibility for utility services costs other than initial installation costs reimbursed under this article, and the agency shall provide adequate safeguards to protect the state's interest in this regard.

(f) The board shall require lessees to insure at their own expense for the benefit of the state, any leased relocatable facility that is the property of the state, against any risks, including liability from the use thereof, in the amounts the board deems necessary to protect the interests of the state. Neither the board nor the state shall assume any responsibility for utility services costs other than initial installation costs reimbursed under this article, and the agency shall provide adequate safeguards to protect the state's interest in this regard.

(g) No relocatable facilities shall be made available to an agency unless the agency furnishes evidence, satisfactory to the board, that the agency has no other facility available for rental, lease, or purchase in the geographic service area that is economically or otherwise feasible.

(h) The board shall have prepared for its use, performance specifications for relocatable facilities and bids for their construction that can be solicited from more than one responsible bidder. The board shall from time to time solicit bids from, and award to, the lowest responsible competitive bidder, contracts for the construction or purchase of relocatable facilities that have been approved for lease to eligible agencies that provide child care and development services, including preschool or extended day care services.

(i) If at any time the board determines that a lessees' need for particular relocatable facilities that were made available to the lessee

pursuant to this article has ceased, the board may take possession of the relocatable facilities and may lease them to other eligible contracting agencies, or, if there is no longer a need for the relocatable facilities, the board may dispose of them to public or private parties in the manner it deems to be in the best interests of the state.

(j) If a lessee uses a particular relocatable facility for only a portion of the year, the board may enter into a second lease with a public or private party for the use of that facility for the portion of the year during which the facility would otherwise be unused, in the manner it deems to be in the best interests of the state. The lessee shall be subject to subdivisions (d) and (f).

SEC. 6. Section 8495.1 is added to the Education Code, to read:

8495.1. (a) The State Allocation Board shall establish regulations for the allocation of funds for capital outlay and for the reimbursement of initial utility installation costs for purposes of this chapter. The Superintendent of Public Instruction shall establish qualifications for determining the eligibility of agencies providing child care and development services, including preschool and extended day care service, to apply for these funds.

(b) Notwithstanding any other provision of law, except for Section 8477, priority in funding of capital outlay grants or relocatables from funds administered pursuant to Section 8277.7 and under this article, shall be determined in the following order:

(1) Programs experiencing emergencies as defined by the Superintendent of Public Instruction and the State Allocation Board.

(2) Facilities lost due to the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120) of Part 28).

(3) Expansion of child care services.

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:

The Class Size Reduction Program has resulted in a loss of child care and development facilities. In order to provide funding to replace these lost facilities it is necessary that this act take effect immediately.

CHAPTER 363

An act to add Section 25184.1 to the Health and Safety Code, relating to hazardous waste and substances.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 25184.1 is added to the Health and Safety Code, to read:

25184.1. If any administrative order or decision that imposes a penalty is issued pursuant to this chapter or Chapter 6.8 (commencing with Section 25300), the administrative order or decision has become final, and, if applicable, a petition for judicial review of the final order or decision has not been filed within the time limits prescribed in Section 11523 of the Government Code, the department may apply to the clerk of the appropriate court for a judgment to collect the administrative penalty. The department's application, which shall include a certified copy of the the final administrative order or decision, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

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 364

An act to amend Sections 1872.8 and 1872.83 of the Insurance Code, relating to insurance.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 1872.8 of the Insurance Code is amended to read:

1872.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed

one dollar ($1) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund increased investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft. Thirty-four percent of those funds received from ninety-five cents ($0.95) of the assessment fee per insured vehicle shall be distributed to the Bureau of Fraudulent Claims for enhanced investigative efforts, 15 percent of that ninety-five cents ($0.95) shall be deposited in the Motor Vehicle Account for appropriation to the Department of the California Highway Patrol for enhanced prevention and investigative efforts to deter economic automobile theft, and 51 percent of the funds shall be distributed to district attorneys for purposes of investigation and prosecution of automobile insurance fraud cases, including fraud involving economic automobile theft.

(b) The commissioner shall award funds to district attorneys according to population. The commissioner may alter this distribution formula as necessary to achieve the most effective distribution of funds. Each local district attorney desiring a portion of those funds shall submit to the commissioner an application detailing the proposed use of any moneys that may be provided. The application shall include a detailed accounting of assessment funds received and expended in prior years, including at a minimum (1) the amount of funds received and expended; (2) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (3) results achieved as a consequence of expenditures made, including the number of investigations, arrests, complaints filed, convictions, and the amounts originally claimed in cases prosecuted compared to payments actually made in those cases; and (4) other relevant information as the commissioner may reasonably require. Any district attorney who fails to submit an application within 90 days of the commissioner's deadline for applications shall be subject to loss of distribution of the money. The commissioner may consider recommendations and advice of the bureau and the Commissioner of the California Highway Patrol in allocating moneys to local district attorneys. Any district attorney that receives funds shall submit an annual report to the commissioner, which may be made public, as to the success of the program administered. The report shall provide information and statistics on the number of active investigations, arrests, indictments, and convictions. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential.

(c) The remaining five cents ($0.05) shall be spent pursuant to Article 6 (commencing with Section 1876) of this chapter.

(d) Except for funds to be deposited in the Motor Vehicle Account for allocation to the California Highway Patrol for purposes of the

Motor Vehicle Prevention Act, (Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code), the funds received under this section shall be deposited in the Insurance Fund and be expended and distributed when appropriated by the Legislature.

(e) In the course of its investigations, the Bureau of Fraudulent Claims shall aggressively pursue all reported incidents of probable fraud and, in addition, shall forward to the appropriate disciplinary body the names of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity along with all relevant supporting evidence.

(f) As used in this section "economic automobile theft" means automobile theft perpetrated for financial gain, including, but not limited to, the following:

(1) Theft of a motor vehicle for financial gain.

(2) Reporting that a motor vehicle has been stolen for the purpose of filing a false insurance claim.

(3) Engaging in any act prohibited by Chapter 3.5 (commencing with Section 10801) of Division 4 of the Vehicle Code.

(4) Switching of vehicle identification numbers to obtain title to a stolen motor vehicle.

SEC. 1.5. Section 1872.8 of the Insurance Code is amended to read:

1872.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed one dollar ($1) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund increased investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft. Thirty-four percent of those funds received from ninety-five cents ($0.95) of the assessment fee per insured vehicle shall be distributed to the Bureau of Fraudulent Claims for enhanced investigative efforts, 15 percent of that ninety-five cents ($0.95) shall be deposited in the Motor Vehicle Account for appropriation to the Department of the California Highway Patrol for enhanced prevention and investigative efforts to deter economic automobile theft, and 51 percent of the funds shall be distributed to district attorneys for purposes of investigation and prosecution of automobile insurance fraud cases, including fraud involving economic automobile theft.

(b) The commissioner shall award funds to district attorneys according to population. The commissioner may alter this distribution formula as necessary to achieve the most effective distribution of funds. Each local district attorney desiring a portion of those funds shall submit to the commissioner an application detailing the proposed use of any moneys that may be provided. The application shall include a detailed accounting of assessment funds received and expended in prior years, including at a minimum (1) the amount of funds received and expended; (2) the uses to which those funds were put, including payment of salaries and expenses,

purchase of equipment and supplies, and other expenditures by type; (3) results achieved as a consequence of expenditures made, including the number of investigations, arrests, complaints filed, convictions, and the amounts originally claimed in cases prosecuted compared to payments actually made in those cases; and (4) other relevant information as the commissioner may reasonably require. Any district attorney who fails to submit an application within 90 days of the commissioner's deadline for applications shall be subject to loss of distribution of the money. The commissioner may consider recommendations and advice of the bureau and the Commissioner of the California Highway Patrol in allocating moneys to local district attorneys. Any district attorney that receives funds shall submit an annual report to the commissioner, which may be made public, as to the success of the program administered. The report shall provide information and statistics on the number of active investigations, arrests, indictments, and convictions. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential.

(c) The remaining five cents ($0.05) shall be spent for enhanced automobile insurance fraud investigation by the bureau.

(d) Except for funds to be deposited in the Motor Vehicle Account for allocation to the California Highway Patrol for purposes of the Motor Vehicle Prevention Act, (Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code), the funds received under this section shall be deposited in the Insurance Fund and be expended and distributed when appropriated by the Legislature.

(e) In the course of its investigations, the Bureau of Fraudulent Claims shall aggressively pursue all reported incidents of probable fraud and, in addition, shall forward to the appropriate disciplinary body the names of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity along with all relevant supporting evidence.

(f) As used in this section "economic automobile theft" means automobile theft perpetrated for financial gain, including, but not limited to, the following:

(1) Theft of a motor vehicle for financial gain.

(2) Reporting that a motor vehicle has been stolen for the purpose of filing a false insurance claim.

(3) Engaging in any act prohibited by Chapter 3.5 (commencing with Section 10801) of Division 4 of the Vehicle Code.

(4) Switching of vehicle identification numbers to obtain title to a stolen motor vehicle.

SEC. 2. Section 1872.83 of the Insurance Code is amended to read:

1872.83. (a) The commissioner shall ensure that the Bureau of Fraudulent Claims aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760

and 11880, in subdivision (a) of Section 1871.4, and in Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Bureau of Fraudulent Claims shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of five members consisting of two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. However, the initial terms of three of the members appointed by the Governor shall expire, respectively, on December 31, 1992, December 31, 1993, and December 31, 1994. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars ($100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Bureau of Fraudulent Claims and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and 11880, and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund,

which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced workers' compensation fraud investigation and prosecution as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Sections 1871.4, 11760, and 11880, and Section 549 of the Penal Code, not be less than three million dollars ($3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision. In no case may that money be transferred to the General Fund.

(d) After incidental expenses, 50 percent of the funds to be used for the purposes of this section shall be provided to the Bureau of Fraudulent Claims of the Department of Insurance for enhanced investigative efforts and 50 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the bureau and the Fraud Assessment Commission, as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation insurance fraud cases. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail the proposed use of any funds provided. A district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of his or her efforts. Upon receipt, the commissioner shall provide copies to the bureau and the Fraud Assessment Commission of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential.

(e) If a district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other fraud prosecution funds otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for

investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) No county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud shall become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Bureau of Fraudulent Claims does not use all of the funds made available to it under subdivision (d), any remaining funds may be distributed to district attorneys pursuant to a determination by the commissioner in accordance with the same procedures set forth in subdivision (d).

(g) The commissioner shall adopt rules and 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). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(h) The department shall report on an annual basis to the Legislature and the Fraud Assessment Commission on the activities

of the Bureau of Fraudulent Claims and local district attorneys supported by the funds provided by this section.

The annual report shall include, but is not limited to, all of the following information for the department and each district attorney's office:

(1) All allocations, distributions, and expenditures of funds.

(2) The number of search warrants issued.

(3) The number of arrests and prosecutions, and the aggregate number of parties involved in each.

(4) The number of convictions, and names of all convicted fraud perpetrators.

(5) The estimated value of all assets frozen, penalties assessed, and restitutions made for each conviction.

(6) Any additional items necessary to fully inform the Fraud Assessment Commission and the Legislature of the fraud-fighting efforts financed through this section.

(i) In order to meet the requirements of subdivision (g), the department shall submit a biannual information request to those district attorneys who have applied for and received funding through the annual assessment process under this section.

(j) Assessments levied or collected to fight workers' compensation fraud and insurance fraud are not taxes. Those funds are entrusted to the state to fight fraud by funding state and local investigation and prosecution efforts. Accordingly, any funds resulting from assessments, fees, penalties, fines, restitution, or recovery of costs of investigation and prosecution deposited in the Insurance Fund shall not be deemed "unexpended" funds for any purpose and, if remaining in that account at the end of any fiscal year, shall be applied as provided in subdivision (f) and to offset or augment subsequent years' program funding.

SEC. 2.5. Section 1872.83 of the Insurance Code is amended to read:

1872.83. (a) The commissioner shall ensure that the Bureau of Fraudulent Claims aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760 and 11880, in subdivision (a) of Section 1871.4, and in Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Bureau of Fraudulent Claims shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of five members consisting of two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. However, the initial terms of three of the members appointed by the Governor shall expire, respectively, on December 31, 1992, December 31, 1993, and December 31, 1994. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars ($100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Bureau of Fraudulent Claims and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and 11880, and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced workers' compensation fraud investigation and prosecution as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Sections 1871.4, 11760, and 11880, and Section 549 of the Penal Code, not be less than three million dollars ($3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), shall be applied to satisfy for the immediately following fiscal year the

minimum total amount required by this subdivision. In no case may that money be transferred to the General Fund.

(d) After incidental expenses, at least 40 percent of the funds to be used for the purposes of this section shall be provided to the Bureau of Fraudulent Claims of the Department of Insurance for enhanced investigative efforts, and at least 40 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the bureau and the Fraud Assessment Commission, as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation insurance fraud cases. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail the proposed use of any funds provided. A district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of his or her efforts. Upon receipt, the commissioner shall provide copies to the bureau and the Fraud Assessment Commission of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential.

(e) If a district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other fraud prosecution funds otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county.

Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) No county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud shall become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Bureau of Fraudulent Claims does not use all of the funds made available to it under subdivision (d), any remaining funds may be distributed to district attorneys pursuant to a determination by the commissioner in accordance with the same procedures set forth in subdivision (d).

(g) The commissioner shall adopt rules and 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). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(h) The department shall report on an annual basis to the Legislature and the Fraud Assessment Commission on the activities of the Bureau of Fraudulent Claims and local district attorneys supported by the funds provided by this section.

The annual report shall include, but is not limited to, all of the following information for the department and each district attorney's office:

(1) All allocations, distributions, and expenditures of funds.

(2) The number of search warrants issued.

(3) The number of arrests and prosecutions, and the aggregate number of parties involved in each.

(4) The number of convictions, and names of all convicted fraud perpetrators.

(5) The estimated value of all assets frozen, penalties assessed, and restitutions made for each conviction.

(6) Any additional items necessary to fully inform the Fraud Assessment Commission and the Legislature of the fraud-fighting efforts financed through this section.

(i) In order to meet the requirements of subdivision (g), the department shall submit a biannual information request to those district attorneys who have applied for and received funding through the annual assessment process under this section.

(j) Assessments levied or collected to fight workers' compensation fraud and insurance fraud are not taxes. Those funds are entrusted to the state to fight fraud by funding state and local investigation and prosecution efforts. Accordingly, any funds resulting from assessments, fees, penalties, fines, restitution, or recovery of costs of investigation and prosecution deposited in the Insurance Fund shall not be deemed "unexpended" funds for any purpose and, if remaining in that account at the end of any fiscal year, shall be applied as provided in subdivision (f) and to offset or augment subsequent years' program funding.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1872.8 of the Insurance Code proposed by both this bill and SB 695. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 1872.8 of the Insurance Code, and (3) this bill is enacted after SB 695, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 1872.83 of the Insurance Code proposed by both this bill and AB 1004. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 1872.83 of the Insurance Code, and (3) this bill is enacted after AB 1004, in which case Section 2 of this bill shall not become operative.

CHAPTER 365

An act to amend Sections 25503.5 and 25505 of the Health and Safety Code, relating to hazardous materials.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 25503.5 of the Health and Safety Code is amended to read:

25503.5. (a) Any business, except as provided in subdivisions (b) and (c), that handles a hazardous material or a mixture containing a hazardous material that has a quantity at any one time during the reporting year equal to, or greater than, a total weight of 500 pounds,

or a total volume of 55 gallons, or 200 cubic feet at standard temperature and pressure for compressed gas, or, if the substance is a radioactive material that is handled in quantities for which an emergency plan is required to be adopted pursuant to Part 30 (commencing with Section 30.1), Part 40 (commencing with Section 40.1), or Part 70 (commencing with Section 70.1), of Chapter 10 of Title 10 of the Code of Federal Regulations (54 Federal Register 14051), or pursuant to any regulations adopted by the state in accordance with those regulations, shall establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards prescribed in the regulations adopted pursuant to Section 25503. In meeting the requirements of this subdivision, a business may, if it elects to do so, use the format adopted pursuant to Section 25503.4.

(b) (1) Oxygen, nitrogen, and nitrous oxide, ordinarily maintained by a physician, dentist, podiatrist, veterinarian, or pharmacist, at his or her office or place of business, stored at each office or place of business in quantities of not more than 1,000 cubic feet of each material at any one time, are exempt from this section and from Section 25505. The administering agency may require a one-time inventory of these materials for a fee not to exceed fifty dollars ($50) to pay for the costs incurred by the agency in processing the inventory forms.

(2) (A) Lubricating oil is exempt from this section and Sections 25505 and 25509, for a single business facility, if the total volume of each type of lubricating oil handled at that facility does not exceed 55 gallons and the total volume of all types of lubricating oil handled at that facility does not exceed 275 gallons, at any one time.

(B) For purposes of this paragraph, "lubricating oil" means any oil intended for use in an internal combustion crankcase, or the transmission, gearbox, differential, or hydraulic system of an automobile, bus, truck, vessel, plane, heavy equipment, or other machinery powered by an internal combustion or electric powered engine. "Lubricating oil" does not include used oil, as defined in subdivision (a) of Section 25250.1.

(c) (1) Hazardous material contained solely in a consumer product for direct distribution to, and use by, the general public is exempt from the business plan requirements of this chapter unless the administering agency has found, and has provided notice to the business handling the product, that the handling of certain quantities of the product requires the submission of a business plan, or any portion thereof, in response to public health, safety, or environmental concerns.

(2) In addition to the authority specified in paragraph (4), the administering agency may, in exceptional circumstances, following notice and public hearing, exempt from the inventory provisions of this chapter any hazardous substance specified in subdivision (k) of Section 25501 if the administering agency finds that the hazardous

substance would not pose a present or potential danger to the environment or to human health and safety if the hazardous substance was released into the environment. The administering agency shall specify in writing the basis for granting any exemption under this paragraph. The administering agency shall send a notice to the office within five days from the effective date of any exemption granted pursuant to this paragraph.

(3) The administering agency, upon application by a handler, may exempt the handler, under conditions that the administering agency determines to be proper, from any portion of the business plan, upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment or affect the ability of the administering agency and emergency rescue personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying the exemption. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(4) The administering agency, upon application by a handler, may exempt a hazardous material from the inventory provisions of this chapter upon proof that the material does not pose a significant present or potential hazard to human health and safety or to the environment if released into the workplace or environment. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(5) An administering agency shall exempt a business operating a farm for purposes of cultivating the soil or raising or harvesting any agricultural or horticultural commodity from filing the information in the business plan required by subdivisions (b) and (c) of Section 25504 if all of the following requirements are met:

(A) The handler annually provides the inventory of information required by Section 25509 to the county agricultural commissioner before January 1 of each year.

(B) Each building in which hazardous materials subject to this chapter are stored is posted with signs, in accordance with regulations that the office shall adopt, that provide notice of the storage of any of the following:

(i) Pesticides.

(ii) Petroleum fuels and oil.

(iii) Types of fertilizers.

(C) Each county agricultural commissioner forwards the inventory to the administering agency within 30 days from the date of receipt of the inventory.

(6) The administering agency shall exempt a business operating an unstaffed remote facility located in an isolated sparsely populated area from the hazardous materials business plan and inventory requirements of this article if the facility is not otherwise subject to the requirements of applicable federal law, and all of the following requirements are met:

(A) The types and quantities of materials onsite are limited to one or more of the following:

(i) Five hundred standard cubic feet of compressed inert gases (asphyxiation and pressure hazards only).

(ii) Five hundred gallons of combustible liquid used as a fuel source.

(iii) Two hundred gallons of corrosive liquids used as electrolytes in closed containers.

(iv) Five hundred gallons of lubricating and hydraulic fluids.

(v) Twelve hundred gallons of flammable gas used as a fuel source.

(B) The facility is secured and not accessible to the public.

(C) Warning signs are posted and maintained for hazardous materials pursuant to the California Fire Code.

(D) A one-time notification and inventory is provided to the administering agency along with a processing fee in lieu of the existing fee. The fee shall not exceed the actual cost of processing the notification and inventory, including a verification inspection if necessary.

(E) If the information contained in the initial notification or inventory changes and the time period of the change is longer than 30 days, the notification or inventory shall be resubmitted within 30 days to the administering agency to reflect the change, along with a processing fee, in lieu of the existing fee, that does not exceed the actual cost of processing the amended notification or inventory, including a verification inspection, if necessary.

(F) The administering agency shall forward a copy of the notification and inventory to those agencies that share responsibility for emergency response.

(G) The administering agency may require an unstaffed remote facility to submit a hazardous materials business plan and inventory in accordance with this article if the agency finds that special circumstances exist such that development and maintenance of the business plan and inventory is necessary to protect public health and safety and the environment.

(d) The administering agency shall provide all information obtained from completed inventory forms, upon request, to emergency rescue personnel on a 24-hour basis.

(e) The administering agency shall adopt procedures to provide for public input when approving any applications submitted pursuant to paragraph (3) or (4) of subdivision (c).

SEC. 2. Section 25505 of the Health and Safety Code is amended to read:

25505. (a) (1) Each handler shall submit its business plan to the administering agency in accordance with the requirements of this article and certify that the business plan meets the requirements of this article.

(2) If, after review, the administering agency determines that the handler's business plan is deficient in any way, the administrative

agency shall notify the handler of those deficiencies. The handler shall submit a corrected business plan within 30 days from the date of the notice.

(3) If a handler fails, after reasonable notice, to submit a business plan in compliance with this article, the administering agency shall immediately take appropriate action to enforce this article, including the imposition of civil and criminal penalties as specified in this article.

(b) In addition to the requirements of Section 25510, whenever a substantial change in the handler's operations occurs that requires a modification of its business plan, the handler shall submit a copy of the business plan revisions to the administering agency within 30 days from the date of the operational change.

(c) Each handler shall, in any case, review the business plan, submitted pursuant to subdivision (a) or (b) at least once every three years thereafter after the initial submission of the business plan, to determine if a revision is needed and shall certify to the administering agency that the review was made and that any necessary changes were made to the plan. A copy of those changes shall be submitted to the administering agency as a part of that certification.

(d) Unless exempted from the business plan requirements under this chapter, each handler shall annually submit a completed inventory form to the administering agency of the county or city in which the handler is located.

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 366

An act to add and repeal Sections 113996, 113998, and 113998.1 of the Health and Safety Code, relating to food facilities.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. This act shall be known and may be cited as the Lauren Beth Rudolph Food Safety Act of 1997.

SEC. 2. Section 113996 is added to the Health and Safety Code, to read:

113996. (a) All ready-to-eat foods prepared at the food facility from raw or incompletely cooked animal tissues shall be thoroughly cooked prior to serving. For purposes of this subdivision, food shall be thoroughly cooked if it conforms to the following requirements, except as specified in subdivision (b):

(1) Comminuted meat or any food containing comminuted meat shall be heated to a minimum internal temperature of 69 degrees Celsius (157 degrees Fahrenheit), or an optional internal temperature of 68 degrees Celsius (155 degrees Fahrenheit) for 15 seconds.

(2) Eggs and foods containing raw eggs shall be heated to a minimum internal temperature of 63 degrees Celsius (145 degrees Fahrenheit).

(3) Pork shall be heated to a minimum internal temperature of 68 degrees Celsius (155 degrees Fahrenheit).

(4) Poultry, comminuted poultry, stuffed fish, stuffed meat, stuffed poultry, and any food stuffed with fish, meat, or poultry shall be heated to a minimum internal temperature of 74 degrees Celsius (165 degrees Fahrenheit).

(b) When foods containing raw or incompletely cooked animal tissues specified in this section are prepared in a microwave oven, they shall be heated at a minimum internal temperature of 14 degrees Celsius (25 degrees Fahrenheit) above the minimum temperatures specified in subdivision (a). During microwaving, the food shall be completely enclosed in a container and periodically stirred or rotated to assure even heat distribution. Upon the completion of microwaving, the enclosed food shall be left standing for a minimum of two minutes to assure temperature equilibrium. This subdivision does not apply to the heating of ready-to-eat cooked foods or the defrosting of food items.

(c) Ready-to-eat foods made from or containing eggs or comminuted meat, or single pieces of meat, including beef, veal, lamb, pork, fish, and seafood, that have not been thoroughly cooked as provided in this section may be served if the consumer specifically orders that these foods be individually prepared less than thoroughly cooked.

(d) The department shall authorize alternative time and temperature minimum heating requirements to thoroughly cook the food identified in this section when the food facility or person demonstrates to the department that the alternative heating requirements provide an equivalent level of food safety.

(e) For purposes of this section, "meat" means the tissue of animals used as food, including beef, veal, lamb, pork, and other edible animals, except eggs, fish, and poultry, that is offered for human consumption.

(f) It is the intent of the Legislature that the requirements of this section be uniformly enforced. The department shall train and provide guidance to local health departments to promote uniform enforcement of the requirements specified in this section.

(g) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 3. Section 113998 is added to the Health and Safety Code, to read:

113998. (a) Any potentially hazardous food cooked, cooled, and reheated by a food facility and subsequently reheated for the purpose of immediate serving or hot holding shall be heated to a minimum internal temperature of 74 degrees Celsius (165 degrees Fahrenheit).

(b) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 4. Section 113998.1 is added to the Health and Safety Code, to read:

113998.1. (a) Notwithstanding Section 113998, ready-to-eat potentially hazardous food taken from a commercially processed, hermetically sealed container or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of a least 60 degrees Celsius (140 degrees Fahrenheit) for hot holding. No minimum temperature is required if the food described in this section is prepared for immediate service.

(b) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 5. The State Department of Health Services shall report to the Legislature on or before July 1, 1999, regarding the enforcement of Sections 113996 and 113998 of the Health and Safety Code.

SEC. 6. 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 367

An act to amend Section 798.73 of, and to add Section 798.83 to, the Civil Code, relating to mobilehome parks.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 798.73 of the Civil Code is amended to read:

798.73. The management shall not require the removal of a mobilehome from the park in the event of its sale to a third party during the term of the homeowner's rental agreement. However, in the event of a sale to a third party, in order to upgrade the quality of the park, the management may require that a mobilehome be removed from the park where:

(a) It is not a "mobilehome" within the meaning of Section 798.3.

(b) It is more than 20 years old, or more than 25 years old if manufactured after September 15, 1971, and is 20 feet wide or more, and the mobilehome does not comply with the health and safety standards provided in Sections 18550, 18552, and 18605 of the Health and Safety Code and the regulations established thereunder, as determined following an inspection by the appropriate enforcement agency, as defined in Section 18207 of the Health and Safety Code.

(c) The mobilehome is more than 17 years old, or more than 25 years old if manufactured after September 15, 1971, and is less than 20 feet wide, and the mobilehome does not comply with the construction and safety standards under Sections 18550, 18552, and 18605 of the Health and Safety Code and the regulations established thereunder, as determined following an inspection by the appropriate enforcement agency, as defined in Section 18207 of the Health and Safety Code.

(d) It is in a significantly rundown condition or in disrepair, as determined by the general condition of the mobilehome and its acceptability to the health and safety of the occupants and to the public, exclusive of its age. The management shall use reasonable

discretion in determining the general condition of the mobilehome and its accessory structures. The management shall bear the burden of demonstrating that the mobilehome is in a significantly rundown condition or in disrepair. The management of the park shall not require repairs or improvements to the park space or property owned by the management, except for damage caused by the actions or negligence of the homeowner or an agent of the homeowner.

SEC. 2. Section 798.83 is added to the Civil Code, to read:

798.83. In the case of a sale or transfer of a mobilehome that will remain in the park, the management of the park shall not require repairs or improvements to the park space or property owned by the management, except for damage caused by the actions or negligence of the homeowner or an agent of the homeowner.

CHAPTER 368

An act to amend Sections 6, 10, and 10.2 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to water.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 6 of the County Water Authority Act (Chapter 545 of the Statutes of 1943) is amended to read:

Sec. 6. (a) All powers, privileges, and duties vested in or imposed upon any authority incorporated under this act shall be exercised and performed by and through a board of directors. The exercise of any and all executive, administrative, and ministerial powers may be delegated by the board of directors to any of the offices created by this act or by the board of directors acting under this act.

(b) The board of directors shall consist of at least one representative from each public agency, the area of which is within the authority. The representatives shall be designated and appointed by the chief executive officers of those public agencies, respectively, with the consent and approval of the legislative bodies of the public agencies, respectively. Any member of the governing body of a member agency that is a water district may be appointed by that member agency to the board of the authority to serve as the agency's representative, except that, in the case of agencies with several representatives, a majority of the members of the governing body of the agency may not be appointed by the agency to serve as representatives on the board of the authority. Any director holding dual offices shall not vote upon any contract between a county water authority and the member public agency he or she represents on the

authority's board. The term "water district," as used in this subdivision, has the same meaning as in subdivision (a) of Section 10.

(c) Members of the board of directors shall hold office for a term of six years, and until their successors are appointed and qualified. However, the terms of the members of the first board shall be determined by lot so that the terms of not less than one-half of the members shall be three years and the terms of the remainder shall be six years. Every member shall be subject to recall by the voters of the public agency from which that member is appointed, in accordance with the recall provisions of the freeholders' charter or other law applicable to the public agency. Notwithstanding that representatives are appointed for a fixed term of years, members of the board of directors serve at the will of the governing body of the public agency from which the member is appointed and may be removed by a majority vote of the governing body without a showing of good cause.

(d) In addition to one representative, any public agency may, at its option, designate and appoint one additional representative for each full 5 percent of the assessed value of property taxable for authority purposes which is within the public agency. However, the term of office of any representative shall not be changed or terminated by reason of any future change in the assessed value of property within any member agency.

(e) Each member of the board of directors shall be entitled to vote on all actions coming before the board and shall be entitled to cast one vote for each five million dollars ($5,000,000), or major fractional part thereof, of the total financial contribution paid to the authority that is attributable to the public agency of which the member is a representative provided that no public agency shall have votes that exceed the number of the total votes of all the other public agencies. A public agency with more than one representative shall have the option, by ordinance, to either require its representatives to cast all of that agency's votes as a unit, as a majority of the representatives present shall determine, or to entitle each such representative to cast an equal share of the total vote of such agency. A copy of the ordinance shall be delivered to the secretary of the board of directors. The affirmative votes of members representing more than 50 percent of the number of votes of all the members shall be necessary, and except as herein provided, sufficient to carry any action coming before the board of directors. If the public agency member having the largest total financial contribution to the authority has more than 38 percent of the total financial contribution to the authority, the affirmative votes of members representing more than 55 percent of the number of votes of all the members shall be necessary, except as herein provided, to carry any action coming before the board of directors. Any meeting may be adjourned or recessed from day to day or from time to time, by vote of the director or directors present, irrespective of the number of directors present.

(f) For the purposes of this section, "total financial contribution" includes all amounts paid in taxes, assessments, fees, and charges to or on behalf of the authority with respect to property located within the boundaries of member public agencies, including, but not limited to, standby charges, capacity charges, readiness to serve charges, connection and maintenance fees, annexation fees and charges for water delivered to member public agencies by the authority excluding the cost of treatment for the water. The total financial contribution shall be determined by the board of directors as of the end of each fiscal year. Allocation of voting power shall be reestablished by the board of directors on January 1 of each year based upon the calculation determined for the previous fiscal year.

(g) Subject to confirmation by his or her public agency, a member of the board of directors may designate another member of the board of directors to vote in his or her absence. The designation and the confirmation shall be by a written instrument filed with the authority. If a director will be absent and wishes the designee to cast the vote, a written notice shall be filed with the secretary of the board of directors. If the notice is not received by the authority, the vote of the absent director will not be counted. The designation, confirmation, and notices shall be maintained on file with the authority. The designation may be changed from time to time with the confirmation of the representative's agency. The designation shall not direct how the absent representative's vote shall be cast on any matter. Directors from a public agency represented by more than one director shall be deemed confirmed as designated representatives to vote for absent directors from that public agency. This section does not apply to a public agency that has exercised the option under subdivision (e) to cast all of that agency's votes as a unit.

(h) Notwithstanding subdivision (f), the total financial contribution and the vote of each member public agency of the San Diego County Water Authority as of July 1, 1997, shall be as follows:

AGENCY	Total Financial Contribution July 1, 1997	VOTES
Carlsbad Municipal Water District	$129,787,887	25.96
City of Del Mar	13,712,188	2.74
City of Escondido	128,929,059	25.78
Fallbrook Public Utilities District	116,801,107	23.36
Helix Water District	356,506,629	71.30
National City	45,046,563	9.01
City of Oceanside	192,690,117	38.53
Olivenhain Municipal Water District	73,733,684	14.75

Otay Water District	146,294,367	29.26
Padre Dam Municipal Water District	142,768,644	28.55
Pendleton Military Res.	10,921,265	2.18
City of Poway	82,602,257	16.52
Rainbow Municipal Water District	194,841,500	38.96
Ramona Municipal Water District	65,220,318	13.04
Rincon Del Diablo Municipal Water District	69,024,271	13.80
City of San Diego	1,864,642,414	372.97
San Dieguito Water District	51,831,643	10.37
Santa Fe Irrigation District	64,860,359	12.97
South Bay Irrigation District	139,063,067	27.81
Vallecitos Water District	64,994,093	13.00
Valley Center Municipal Water District	243,877,685	48.77
Vista Irrigation District	118,493,448	23.70
Yuima Municipal Water District	15,146,776	3.03
TOTALS:	$4,331,789,341	866.36

(i) The total financial contribution for the San Diego County Water Authority shall be determined by the board of directors as of the end of each fiscal year by adding the total financial contribution of each agency for the fiscal year to the totals provided for in subdivision (h) establishing the total financial contribution as of July 1, 1997. Allocation of voting power shall be reestablished by the board of directors to be effective on January 1 of each year based upon the calculation determined for the previous fiscal year. In addition to the definition in subdivision (f), "total financial contribution" shall also include all amounts paid in taxes, assessments, fees, and charges paid to or on behalf of the Metropolitan Water District of Southern California with respect to property located within the boundaries of member public agencies including, but not limited to, standby charges, capacity charges, readiness to serve charges, connection and maintenance fees, annexation fees, and charges for water sold to member public agencies by the authority excluding the cost of treatment for the water.

(j) Members of the first board of directors so constituted shall convene at the call of the clerk of the board of supervisors in the meeting room of the board of supervisors at the county seat of the county, and immediately upon convening, the board of directors shall elect from its membership a chairperson, a vice chairperson, and a secretary, who shall serve for a period of two years, or until their respective successors are elected and qualified.

(k) A quorum necessary for the transaction of business at any meeting of the board of directors exists whenever there are present at the meeting a majority of the membership of the board of directors that includes at least one-half of the number of representatives of each public agency member having more than six representatives serving on the board of directors. Designees appointed pursuant to subdivision (g) shall not be considered "present" for the purposes of establishing a quorum. However, any regular or special meeting of the board of directors at which a quorum is not present may be continued from time to time until a quorum is present to transact the business of the board of directors.

SEC. 2. Section 10 of the County Water Authority Act (Chapter 545 of the Statutes of 1943) is amended to read:

Sec. 10. (a) For the purposes of this section, the following definitions apply to the terms used; the term "city" means and includes any municipal corporation or municipality of the State of California, whether organized under a freeholder's charter or under the provisions of general law of the type and class of cities and incorporated towns; the term "water district" means and includes any municipal water district, municipal utility district, public utility district, county water district, irrigation district, or any other public corporation or agency of the State of California of similar character.

(b) Territory may be annexed to any county water authority organized under this act by one of the following methods:

(1) By annexation to, or consolidation with, the area of any city, the area of which, as a separate unit, has become a part of any county water authority organized under this act, the annexation or consolidation to occur upon compliance with the provisions of law governing the annexation to, or consolidation with, the area of the city. Upon completion of the annexation to, or consolidation with, the city in compliance with the provisions of law applicable thereto, the territory shall become, and be, a part of the county water authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the authority at the time authorized or outstanding.

(2) By annexation to, or consolidation with, any city which, as a separate unit, has become a part of any water district whose area, as a separate unit, has become a part of any county water authority organized under this act, in instances where, under the applicable provisions of law governing the change of boundaries of the water district, the annexation or consolidation automatically will result in the enlargement of the area of the water district, the annexation or consolidation to occur upon compliance with the provisions of law governing the annexation to, or consolidation with, the area of the city. Upon completion of the annexation to, or consolidation with, the city in compliance with the provisions of law applicable thereto, the territory shall become, and be, a part of the water district and of the

county water authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of the water district and of the county water authority, including the payment of bonds and other obligations of the water district and of the county water authority at the time authorized or outstanding. If any territory has been so annexed to, or consolidated with, any city prior to the effective date of this paragraph, under conditions which would have resulted in the enlargement of the area of the county water authority had this paragraph then been in effect, upon compliance with the following provisions of this paragraph, the territory shall be annexed to, and shall become and be part of, the county water authority and shall be a part of the water district for all purposes, the last-mentioned provisions being as follows:

(A) The governing body of the city, at any time after the effective date of this paragraph, may adopt an ordinance which, after reciting that the territory has been annexed to, or consolidated with, the city by proceedings previously taken under statutory authority, and after referring to the applicable statutes and to the date and place of filing of the certificate or certificates evidencing the annexation or consolidation, shall describe the territory and shall determine and declare that the territory shall be, and thereby is, annexed to the county water authority, and the ordinance shall further determine and declare that the territory shall become and be, and thereby, is a part of the county water authority, and shall be, and thereby is, a part of the water district for all purposes.

(B) The governing body, or clerk thereof, of the city shall file a certified copy of the ordinance with the Secretary of State. Upon the filing of the certified copy of the ordinance in the office of the Secretary of State, the territory shall become, and be, a part of the county water authority and shall be a part of the water district for all purposes, and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority and of the water district, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding.

(C) Upon the filing of the certified copy of the ordinance, the Secretary of State shall, within 10 days, issue a certificate, describing the territory, reciting the filing of the certified copy of the ordinance and the annexation of the territory to the county water authority, and declaring that the territory is a part of the county water authority and of the water district. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and a duplicate of the original certificate to the clerk of the governing body of the water district, and shall forward a certified copy of the certificate to the county clerk of the county in which the county water authority is situated.

(3) Upon terms and conditions fixed by the board of directors of the county water authority and in the manner provided in

subdivision (c), by direct annexation, as a separate unit, of the corporate area of any water district or city.

(4) Upon terms and conditions fixed by the board of directors of the county water authority and in the manner provided in subdivision (d), by annexation to, or consolidation with, any water district, the area of which, in whole or in part, is included within the county water authority as a separate unit; provided that, unless the territory is so annexed to the county water authority with the consent of the board of directors, the annexation of territory to, or the consolidation of, the territory with the water district does not authorize or entitle the water district or the territory to demand or receive any water from the county water authority for use in the territory; and provided further, that, except where automatic annexation results under the conditions specified in paragraph (2), nothing in this act prevents the annexation of territory to, or the consolidation of territory with, any water district for its local purposes only and without annexing the territory to the county water authority, and the local annexation or consolidation may occur without requesting or obtaining the consent thereto of the board of directors of the county water authority.

(c) The governing body of any water district or city may apply to the board of directors of the county water authority for consent to annex the corporate area of the water district or city to the county water authority. The board of directors may grant or deny the application and, in granting the application, may fix the terms and conditions upon which the corporate area of the water district or city may be annexed to, and become a part of, the county water authority. These terms and conditions may provide, among other things, for the levy by the county water authority of special taxes upon taxable property within the water district or city, in addition to the taxes authorized to be levied by the county water authority by other provisions of this act. In case these terms and conditions provide for the levy of these special taxes, the board of directors, in fixing these terms and conditions, shall specify the aggregate amount to be so raised and the number of years prescribed for raising the aggregate sum, and that substantially equal annual levies will be made for the purpose of raising the sum over the period so prescribed. The action of the board of directors, evidenced by resolution, shall be promptly transmitted to the governing body of the applying water district or city and, if the action grants consent to the annexation, the governing body may thereupon submit, to the qualified electors of the water district or city at any general or special election held therein, the proposition of the annexation subject to the terms and conditions. Notice of the election shall be mailed to each voter qualified to vote at the election and shall be given by posting or publication. When notice is given by posting, the notices shall be posted at least 10 days and in three public places in the water district or city. When notice is given by publication, the notice shall be published in the water

district or city pursuant to Section 6061 of the Government Code, at least 10 days before the date fixed for the election. The notice shall contain the substance of the terms and conditions fixed by the board of directors. The election shall be conducted and the returns thereof canvassed in the manner provided by law for elections in the water district or city. If the proposition receives the affirmative vote of a majority of electors of the water district or city voting thereon at the election, the governing body of the water district or city shall certify the result of the election on the proposition to the board of directors of the county water authority, together with a legal description of the boundaries of the corporate area of the water district or city, accompanied by a map or plat indicating those boundaries. A certificate of proceedings shall be made by the secretary of the county water authority and filed with the Secretary of State. Upon the filing thereof in the office of the Secretary of State, the corporate area of the water district or city shall become, and be, an integral part of the county water authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding, and the board of directors of the county water authority may do all things necessary to enforce and make effective the terms and conditions of annexation fixed as authorized. Upon the filing of the certificate of proceedings, the Secretary of State shall, within 10 days, issue a certificate, reciting the filing of the papers and the annexation of the corporate area of the water district or city to the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy thereof to the county clerk of the county in which the county water authority is situated.

(1) If a water district applies to a county water authority for consent to annex its corporate area, as a separate unit, the water district shall include as a part of its corporate area the corporate areas of any cities (whether one or more) which are already included within the county water authority, as separate units, or the water district shall include as a part of its corporate area the corporate areas, or portion thereof, already included within the county water authority, of any water districts (whether one or more) whose corporate areas, in whole or in part, are already included within the county water authority as separate units. That fact shall be taken into consideration by the board of directors of the county water authority in fixing the terms and conditions upon which the applying water district may be annexed to the county water authority, to the end that the areas within the unit member cities or water districts which are already a part of the county water authority, shall not be required to assume any greater financial burden or obligation to the county water authority than they would have had if they had remained a part of the county water authority as separate units.

Concurrently with any election called by an applying water district to submit to the qualified electors of the water district the question of whether the terms and conditions fixed by the board of directors of the county water authority for annexation shall be approved, the governing bodies of the unit member cities or water districts may call and hold elections within their respective corporate limits or portions thereof already included within the county water authority, to determine whether or not the cities or water districts shall withdraw from the county water authority as separate units, and the proposed withdrawal may be made and submitted conditioned upon and effective when the applying water district has finally been annexed to the county water authority.

The effect of the concurrent elections, if a majority of the electors of the applying water district voting thereat vote in favor of annexation, and a majority of the electors of the unit member cities or water districts voting thereat vote in favor of withdrawing, shall be that the annexing water district thereafter shall be authorized to exercise the privileges and to discharge the duties prescribed in this act for public agencies whose areas, as separate units, are included within the county water authority, in place of and instead of the cities or water districts so withdrawing. Notwithstanding Section 11 of this act, the areas within the withdrawing cities or water districts shall remain a part of the county water authority and shall not be excluded therefrom, notwithstanding the fact that the cities or water districts, as corporate entities, have withdrawn from the authority.

If the water district does annex to the county water authority, the directors representing the withdrawing cities or water districts on the board of directors of the county water authority shall continue to act until their successors have been chosen and designated by the appropriate officers of the annexing water district and have qualified as members of the board of directors of the county water authority, after which time the directors representing the withdrawing cities or water districts shall no longer sit or vote on the board.

(2) If a water district applies to a county water authority for consent to annex its corporate area as a separate unit, the water district shall include as a part of its corporate area lands which are in public ownership exempt from taxation by a county water authority, and not within or adjacent to the area within the water district served with water by the district, and which are not to be supplied by the water district with water obtained from, and by reason of, its annexation to the county water authority. That fact may be taken into consideration by the board of directors of the county water authority in fixing the terms and conditions upon which the water district may be annexed to the county water authority and in determining the boundaries of the area to be annexed, and the county water authority may, in the discretion of its board of directors, annex all of the corporate area of the water district as a separate unit excepting that portion consisting of the publicly owned and tax-exempt lands.

(d) The governing body of any water district, the area of which, in whole or in part, is included within a county water authority as a separate unit, may apply to the board of directors of the county water authority for consent to annex to the county water authority territory which the water district seeks to annex to, or consolidate with, the water district, or territory which, without making the territory a part of the county water authority, already has been annexed to, or consolidated with, the water district. The board of directors may grant or deny the application and, in granting the application, may fix the terms and conditions upon which the territory may be annexed to, and become a part of, the county water authority. The terms and conditions may provide, among other things, for the levy by the county water authority of special taxes upon taxable property within the territory in addition to the taxes authorized to be levied by the county water authority by other provisions of this act. In case the terms and conditions provide for the levy of those special taxes, the board of directors, in fixing those terms and conditions, shall specify the aggregate amount to be so raised and the number of years prescribed for raising that aggregate sum and that substantially equal annual levies will be made for the purpose of raising that sum over the period so prescribed. The action of the board of directors evidenced by resolution shall be promptly transmitted to the governing body of the applying water district and to the executive officer of the local agency formation commission of the county in which the county water authority is situated, who may defer the issuance of a certificate of filing until receipt of that resolution, and if the action grants consent to the annexation, the territory may be annexed to the county water authority as provided in paragraph (1) or (2).

(1) If the territory has not been previously annexed to, or consolidated with, the water district, upon completion of the annexation to, or consolidation with, the water district in compliance with the provisions of law applicable thereto, including this section, the territory shall become and be a part of the county water authority and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding, and the board of directors of the county water authority may do all things necessary to enforce and make effective the terms and conditions of annexation fixed; provided that, if the applicable provisions of law governing the annexation to, or consolidation with the water district require any notice of any election called for the purpose of determining whether the proposed annexation or consolidation shall occur, or shall require any notice of hearing or other notice to be given to the residents or electors of, or owners of property in, the territory, the notice shall contain the substance of the terms and conditions of annexation to the county water authority fixed by the board of directors of the

county water authority; and provided further, that the local agency formation commission shall require that the annexation to the water district be subject to the terms and conditions fixed by the board of directors of the county water authority in addition to any other terms and conditions that may be required by the commission; and provided further, that the executive officer of the local agency formation commission having the duty of preparing, executing, and filing a certificate of completion resulting in the annexation to, or consolidation with, the water district, pursuant to the provisions of law applicable thereto, shall include in the certificate of completion the terms and conditions fixed by the board of directors of the county water authority in accordance with the provisions of this act, and shall file a duplicate of the certificate with the board of directors of the county water authority.

(2) If the territory sought to be annexed to a county water authority has been previously annexed to, or consolidated with, the water district, the governing body of the water district, upon being advised of the action of the board of directors of the county water authority, and if the action grants consent to the annexation, may submit to the qualified electors of the territory, if the territory has 12 or more registered voters, at any general or special election held therein, the proposition of the annexation to the county water authority subject to the terms and conditions fixed by the board of directors of the county water authority. Notice of the election shall be given by publication. When the notice is given by posting, the notice shall be posted at least 10 days and in three public places in the territory. When the notice is given by publication, the notice shall be published in the water district pursuant to Section 6061 of the Government Code at least 10 days before the date fixed for the election. The notice shall contain the substance of the terms and conditions fixed by the board of directors. The election shall be conducted and the returns thereof canvassed by the governing body of the water district in the manner provided by law for elections in the water district. If the proposition receives the affirmative vote of a majority of electors of the territory voting thereon at the election, the governing body of the water district shall certify the result of the election on the proposition to the board of directors of the county water authority. If the territory has less than 12 registered voters, no election shall be required, and, following written notice to each owner of property shown on the last equalized assessment roll and the holding of a hearing not less than 10 days after that notice, the annexation may be approved upon the written consent of the owners of more than 50 percent of the assessed valuation of the territory. A certificate of proceedings shall be made by the secretary of the county water authority and filed with the Secretary of State. Upon the filing thereof in the office of the Secretary of State, the territory shall become, and be, a part of the county water authority, and the taxable property therein shall be subject to taxation thereafter for the

purposes of the county water authority, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding, and the board of directors of the county water authority may do all things necessary to enforce and make effective the terms and conditions of annexation of the territory to the county water authority fixed by its board of directors. Upon the filing of the certificate of proceedings, the Secretary of State shall, within 10 days, issue a certificate reciting the filing of the papers and the annexation of the territory to the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy thereof to the county clerk of the county in which the county water authority is situated.

(e) Should the corporate area, or all portions thereof already included within a county water authority, of any water district or city, the corporate area of which, in whole or in part, already is included within the county water authority as a separate unit, annex to a water district or city the corporate area of which, in whole or in part, already is a part of the county water authority as a separate unit, upon the completion of the annexation pursuant to the law pertaining thereto, the water district or city, the corporate area (or portions thereof) of which is so annexed, shall automatically cease to be a separate unit member of the county water authority, but the corporate area (or portions thereof) shall remain a part of the county water authority as a part of the unit member water district or city to which it was annexed. The executive officer of the local agency formation commission having the duty of preparing, executing, and filing the certificate of completion shall file, in addition to any other filings that may be required by law, a duplicate of the certificate with the board of directors of the county water authority.

Should any water district or city, the corporate area of which, in whole or in part, already is included within a county water authority as a separate unit, consolidate with a water district or city the corporate area of which, in whole or in part, already is a part of the county water authority as a separate unit, under the provisions of any law by the terms of which, after consolidation, a new district or city will result and the former water districts or cities participating in the consolidation shall no longer exist, the resulting new water district or city shall be substituted for the water districts or cities whose corporate existence has been terminated by the consolidation as a unit member of the county water authority, and the corporate areas (or portions thereof) of the former water district or cities shall remain a part of the county water authority as a part of the consolidation. The executive officer of the local agency formation commission having the duty of preparing, executing, and filing a certificate of completion shall file, in addition to any other filings that may be required by law, a duplicate of the certificate with the board of directors of the county water authority.

(f) The validity of any proceedings for the annexation to any county water authority organized under this act, of the corporate area of a water district or city as a separate unit, or of territory annexed to, or consolidated with, a water district or city which, as a unit, has been included within a county water authority, shall not be contested in any action unless the action has been brought within three months after the completion of the annexation or, in case the annexation is completed prior to the time that this subdivision takes effect, then within three months after this subdivision became effective.

(g) Whenever territory is annexed to or consolidated with any water district, the corporate area of which, as a unit, has become a part of any county water authority organized under this act, regardless of whether the territory is annexed to and becomes a part of the county water authority, or whenever territory is annexed to any city under the conditions specified in paragraph (1) or (2) of subdivision (b), or whenever territory previously annexed to any city is annexed to the county water authority under the conditions specified in paragraph (2) of subdivision (b), the governing or legislative body, or clerk thereof, of the water district or city, shall file with the board of directors of the county water authority a statement of the change of boundaries of the water district or city, setting forth the legal description of the boundaries of the water district or city, as so changed, and of the part thereof within the county water authority, which statement shall be accompanied by a map or plat indicating those boundaries.

(h) The inclusion in a county water authority of the corporate area, in whole or in part, of any municipal water district, municipal utility district, public utility district, county water district, irrigation district, or other public corporation or agency of the state of similar character, referred to in Section 2, shall not destroy the identity or legal existence or impair the powers of any municipal water district, municipal utility district, public utility district, county water district, irrigation district, or other public corporation or agency of the state of similar character, notwithstanding the identity of purpose or substantial identity of purpose of the county water authority.

(i) In determining the number of members of the board of directors of a county water authority organized under this act from the component public agencies, the corporate areas of which, in whole or in part, are included as units within the county water authority, there shall be considered only the assessed valuation of the property taxable for county water authority purposes lying in the public agencies and in the county water authority. The directors shall be appointed by the chief executive officers, with the consent and approval of the governing bodies, of the component public agencies, respectively, without regard to whether the chief executive officers or members of the governing bodies have been chosen from, or represent, areas of their respective public agencies which lie outside

of the county water authority. The phrase "any water district, the corporate area of which is included within the county water authority" and the phrase "each city, the area of which shall be a part of any county water authority incorporated under this act," and like phrases, used elsewhere in this act, shall be deemed to mean and refer to any water district or city, the corporate area of which, either in whole or in part, is included within the county water authority, but the duties and obligations of the county water authority shall extend only to that part of the corporate area of the water district or city which lie within the county water authority. As to the water district, city, or public agency, the corporate area of which lies partly within and partly without the county water authority, the word "therein" and the phrase "within the city" and like words and phrases, used elsewhere in this act, shall be deemed to mean and refer to that part of the corporate area of the water district, city, or public agency which lies within the county water authority. The charges for water supplied by the county water authority to any component public agency, pursuant to its request, shall be and become an obligation of the public agency, regardless of whether the entire corporate area of the public agency is included within the county water authority, and the county water authority, in administrative and contractual matters, shall deal with the chief executive officers and governing bodies and other proper officials of the component public agencies as chosen or constituted under applicable laws governing the respective public agencies.

SEC. 3. Section 10.2 of the County Water Authority Act (Chapter 545 of the Statutes of 1943) is amended to read:

Sec. 10.2. (a) Notwithstanding any other provisions of this act, territory within a federal military reservation may be annexed to any county water authority organized hereunder as a single member of an authority in the manner provided in this section. As used in this section, "federal military reservation" or "military reservation" means a single federal military reservation or separate but contiguous federal military reservations which are jointly annexed to a county water authority as a single member agency of an authority.

(b) Proceedings for the annexation of a military reservation shall be initiated by the adoption by the board of directors of an authority of a resolution proposing annexation of a military reservation to an authority as a member of an authority.

(c) The resolution proposing the annexation may provide that the annexation shall include one or more separate areas, which may be separately identified for assessing and tax collecting purposes, and that each such area may be subject to one or more of the following terms and conditions:

(1) The fixing and establishment of priorities for the use of, or right to use, water, or capacity rights in any public improvement or facilities, and the determination of, or limitation on, the quantity of, the purposes for which, and the places where, water may be

delivered by the authority to the military reservation for military purposes and uses incidental thereto, as well as for nonmilitary purposes.

(2) The levying by the authority of special taxes upon any private leasehold, possessory interest or other taxable property within the territory annexed, and the imposition and collection of special fees or charges prior to such annexation.

(3) Should portions of any area annexed hereunder be subsequently made available for nonmilitary purposes not in existence at the time of the annexation of such area, the board of directors of the authority may impose new terms and conditions for any subsequent service of water, directly or indirectly, by the authority to such area, including the separation of such an area for assessing and tax collecting purposes and the levying by the authority of special taxes on such portions.

(4) The effective date of the annexation.

(5) Any other matters necessary or incidental to any of the foregoing.

(d) A certified copy of the resolution proposing annexation shall be sent to the official in authority over the military reservation. If the military reservation consents in writing to the annexation and to the terms and conditions established by the board of directors, the board may, by resolution, order the annexation to the authority of the territory situated within the military reservation, subject to said terms and conditions.

(e) A certificate of proceedings taken hereunder shall be made by the secretary of the authority and filed with the Secretary of State. Upon the filing in his or her office of the certificate of proceedings, the Secretary of State shall, within 10 days, issue a certificate reciting the filing of such papers in his or her office and the annexation of the territory to the authority. The Secretary of State shall transmit the original of said certificate to the secretary of the authority and shall forward a certified copy thereof to the county clerk of each county in which the authority is situated.

(f) Upon the filing of the certificate of proceedings with the Secretary of State, or upon the effective date of the annexation provided for in the terms and conditions, whichever is later, the territory within the military reservation shall become and be an integral part of the authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of said authority, including the payment of bonds and other obligations of the authority at the time authorized or outstanding, and the board of directors of the authority shall be empowered to do all things necessary to enforce and make effective the terms and conditions of annexation fixed as herein above authorized.

(g) On and after the effective date of the annexation, the military reservation shall be a separate unit member of the authority and shall be entitled to one representative on the board of directors of the

authority. For the purposes of this act, a military reservation shall be deemed to be a public agency. The representative shall be designated and appointed by the official in authority over the military reservation, shall hold office for a term of six years or until his or her successor is appointed and qualified, and may be recalled by that official.

(h) The transfer of ownership of the fee title of a military reservation, or of any portion thereof, to nonmilitary ownership after annexation to the authority pursuant to this section shall result in the automatic exclusion from the authority of the territory transferred to such ownership.

(i) If a county water authority is a member public agency of a metropolitan water district organized under the Metropolitan Water District Act (Chapter 200 of the Statutes of 1969), such metropolitan water district may impose any or all of the terms and conditions that may be imposed by a county water authority pursuant to subdivisions (a) through (h) of this section in any resolution fixing the terms and conditions for the concurrent annexation of territory in a military reservation.

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 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 369

An act to amend Section 1789.37 of the Civil Code, relating to check cashers.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 1789.37 of the Civil Code is amended to read:

1789.37. (a) Every owner of a check casher's business shall obtain a permit from the Department of Justice to conduct a check casher's business.

(b) All applications for a permit to conduct a check casher's business shall be filed with the department in writing, signed by the applicant if an individual or by a member or officer authorized to sign if the applicant is a corporation or other entity, and shall state the name of the business, the type of business engaged in, whether the applicant intends to enter into deferred deposit agreements, and the business address. Each applicant shall be fingerprinted.

(c) Each applicant for a permit to conduct a check casher's business shall pay a fee not to exceed the cost of processing the application, fingerprinting the applicant, and checking or obtaining the criminal record of the applicant, at the time of filing the application.

(d) Each applicant shall annually, beginning one year from the date of issuance of a check casher's permit, file an application for renewal of the permit with the department, along with payment of a renewal fee not to exceed the cost of processing the application for renewal and checking or obtaining the criminal record of the applicant.

(e) The department shall deny an application for a permit to conduct a check casher's business, or for renewal of a permit, if the applicant has a felony conviction involving dishonesty, fraud, or deceit, provided the crime is substantially related to the qualifications, functions, or duties of a person engaged in the business of check cashing.

(f) The department shall adopt regulations to implement this section, and shall determine the amount of the application fees required by this section. The department shall prescribe forms for the applications and permit required by this section, which shall be uniform throughout the state.

(g) In any action brought by a city attorney or district attorney to enforce a violation of this section, any owner of a check casher's business who engages in the business of check cashing without holding a current and valid permit issued by the department pursuant to this section is subject to a civil penalty, as follows:

(1) For the first offense, not more than one thousand dollars ($1,000).

(2) For the second offense, not more than five thousand dollars ($5,000).

(h) Any person who has twice been found in violation of subdivision (g) and who, within 10 years of the date of the first offense, engages in the business of check cashing without holding a current and valid permit issued by the department pursuant to this section is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding five thousand dollars ($5,000), or by both.

(i) All civil penalties, forfeited bail, or fines received by any court pursuant to this section shall, as soon as practicable after the receipt thereof, be deposited with the county treasurer of the county in

which the court is situated. Fines and forfeitures so deposited shall be disbursed pursuant to the Penal Code. Civil penalties so deposited shall be paid at least once a month as follows:

(1) Fifty percent to the Treasurer by warrant of the county auditor drawn upon the requisition of the clerk or judge of the court, to be deposited in the State Treasury on order of the Controller.

(2) Fifty percent to the city treasurer of the city, if the offense occurred in a city, otherwise to the treasurer of the county in which the prosecution is conducted.

Any money deposited in the State Treasury under this section which is determined by the Controller to have been erroneously deposited therein shall be refunded, subject to approval of the State Board of Control prior to the payment of the refund, out of any money in the State Treasury which is available by law for that purpose.

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 370

An act to amend Section 17331 of, to add Section 17345.1 to, and to repeal and add Section 17345 of, the Financial Code, relating to escrow agents.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 17331 of the Financial Code is amended to read:

17331. (a) Within 30 days following written notice by Fidelity Corporation to an escrow agent a shareholder, officer, director, trustee, manager, or employee of an escrow agent, directly or indirectly compensated by an escrow agent within this state, is required to apply for a Fidelity Corporation Certificate, prepared and issued by Fidelity Corporation, as a condition of his or her

employment or entitlement to compensation, before the person may continue the regular discharge of his or her duties, or have access to moneys or negotiable securities belonging to or in the possession of the escrow agent, or draw checks upon the escrow agent or the trust funds of the escrow agent.

(b) Fidelity Corporation Certificates may also be known as Escrow Agent's Fidelity Corporation Certificates or EAFC Certificates. The certificate at all times remains the property of Fidelity Corporation, and is not transferable by either a member or employee. The certificate is not a warranty or guarantee by Fidelity Corporation of the integrity, veracity, or competence of the person.

(c) An application for a Fidelity Corporation Certificate shall be in writing and in the form prescribed by Fidelity Corporation. The application may include (1) a fee not to exceed fifty dollars ($50), (2) two passport-size photographs, and (3) a set of fingerprints on the form established by the Department of Justice for requesting state summary criminal history information, plus the fee charged by the Department of Justice for processing noncriminal applicant fingerprints. The Department of Justice shall honor the Fidelity Corporation report request form and issue a report to Fidelity Corporation, notwithstanding any other provision of law or regulation to the contrary. Fidelity Corporation is also entitled to submit a set of fingerprints on the specified noncriminal applicant fingerprint form for the purpose of requesting and obtaining a report from the Department of Justice, for the officers and employees of Fidelity Corporation. A member shall cause the filing of applications for all existing employees as required by this section within 30 days of written notice by Fidelity Corporation to the member.

(d) The application form shall include a provision for binding arbitration to allow for arbitration of any appeal or dispute as to a decision by Fidelity Corporation concerning the certificate, as follows:

A DISPUTE AS TO WHETHER THE DENIAL OF THIS CERTIFICATE APPLICATION OR ANY SUBSEQUENT SUSPENSION OR REVOCATION OF THE CERTIFICATE IS UNNECESSARY OR UNAUTHORIZED OR WAS IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY RENDERED, MAY BE DETERMINED BY SUBMISSION TO ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND NOT BY A LAWSUIT OR RESORT TO COURT PROCESS EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT, SUBMIT ANY ISSUE ARISING FROM A DECISION BY FIDELITY CORPORATION TO DENY THIS CERTIFICATE APPLICATION OR TO SUSPEND OR REVOKE THE CERTIFICATE TO BE DECIDED BY BINDING

NEUTRAL ARBITRATION. UPON AN AGREEMENT TO SUBMIT TO BINDING NEUTRAL ARBITRATION, THE APPLICANT HAS NO RIGHT TO HAVE ANY DISPUTE CONCERNING THIS CERTIFICATE APPLICATION LITIGATED IN A COURT OR JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN THE ESCROW LAW. ARBITRATION MAY BE COMPELLED AS PROVIDED BY LAW.

(e) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations for statements made by Fidelity Corporation in reports or recommendations made pursuant to this division, or for reports or recommendations made pursuant to this division to Fidelity Corporation by its members, directors, officers, employees or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, unless the information provided is false and the party making the statement or providing the false information does so with knowledge and malice. Reports or recommendations made pursuant to this section, or Section 17331.1, 17331.2, or 17331.3 are not public documents.

(f) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Corporations, or an officer, agent, or employee of the state or the Department of Corporations for the release of any information furnished to Fidelity Corporation pursuant to this section unless the information released is false and the party, including Fidelity Corporation, its members, directors, officers, employees, or agents, the state, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, who releases the false information does so with knowledge and malice.

(g) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its directors, officers, employees, or agents, for any decision to deny an application for a certificate or to suspend or revoke the certificate of any person or for the timing of any decision or the timing of any notice to persons or members thereof, or for any failure to deny an application under subdivision (a) of Section 17331.2. This subdivision does not apply to acts performed in bad faith or with malice.

(h) Fidelity Corporation, any member of Fidelity Corporation, an agent of Fidelity Corporation or of its members, or any person who uses any information obtained under this section for any purpose not authorized by this chapter is guilty of a misdemeanor.

(i) Section 17331, 17331.1, or 17331.2 does not constitute a restriction or limitation upon the obligation of Fidelity Corporation to indemnify members against loss, as provided in Sections 17310 and 17314. The failure to obtain a certificate, the denial of an application for a certificate, or the suspension, cancellation, or revocation of a certificate does not limit the obligation of Fidelity Corporation to indemnify a member against loss.

(j) As of January 1, 1992, notwithstanding Section 11105 of the Penal Code, Fidelity Corporation is entitled to receive state summary criminal history information and subsequent arrest notification from the Department of Justice as a result of fingerprint cards submitted to the Department of Justice by the Department of Corporations, pursuant to subdivision (g) of Section 17209, Section 17212.1, and subdivision (d) of Section 17414.1, by or on behalf of escrow agents, shareholders, officers, directors, trustees, managers, or employees of an escrow agent, directly or indirectly compensated by an escrow agent. The Department of Justice and Fidelity Corporation shall enter into an agreement to implement this subdivision. The Department of Corporations shall forward to Fidelity Corporation, weekly, a list of names of individual fingerprints submitted to the Department of Justice.

SEC. 2. Section 17345 of the Financial Code is repealed.

SEC. 3. Section 17345 is added to the Financial Code, to read:

17345. Any member aggrieved by any action or decision of Fidelity Corporation may appeal to the commissioner within 30 days from the action or decision, except that all matters relating to claims for loss of trust obligations shall be decided under Section 17345.1. The commissioner's decision on appeal shall be made within 60 days from the date of the appeal and shall be considered final.

SEC. 4. Section 17345.1 is added to the Financial Code, to read:

17345.1. (a) A member or successor in interest aggrieved by any action or decision of Fidelity Corporation may appeal to the commissioner within 30 days from the action or decision by filing a written request for a hearing.

(b) (1) Except as provided in subdivision (c), the hearing of the appeal shall be conducted before an administrative law judge on the staff of the Office of Administrative Hearings and the administrative law judge's proposed decision on the appeal shall be made within 120 days from the date of the appeal.

(2) The hearing of the appeal shall be conducted generally in accordance with the administrative adjudication provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except as specified in this subdivision. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to a hearing under this subdivision.

(3) The following sections of the Government Code shall not apply to a hearing under this subdivision: Section 11503 (relating to

accusations), Section 11504 (relating to statements of issues), Section 11505 (relating to contents of the statement to respondent), Section 11506 (relating to the notice of defense), Section 11507 (relating to amended or supplemental accusations), and Section 11516 (relating to amendment of accusations after submission of case).

(4) The sole parties to the hearing shall be the member or successor in interest (complainant or appellant) and Fidelity Corporation (respondent). Third party intervention shall not be permitted. The disputes, claims, and interests of third parties shall not be within the jurisdiction of the proceedings. However, nothing in this paragraph prohibits any interested party from submitting an amicus brief upon request to and approval by the administrative law judge.

(5) Within 10 days of receipt of the request for a hearing, the commissioner shall schedule the hearing with the Office of Administrative Hearings and shall serve each party by personal service or mail with notice of the hearing, which is to include the date, time, and place of the hearing.

(A) Within 10 days of service of the notice of hearing, the complainant or appellant shall file with the Office of Administrative Hearings, and serve the respondent by personal service or mail with, a written statement that sets forth the matters to be considered at the hearing in sufficient detail to permit the respondent to prepare and present its allegations, and evidence in support thereof, at the hearing and shall contain the following:

(i) A brief statement of the facts that give rise to the hearing.

(ii) A statement of the issue or issues to be considered at the hearing, together with a reference to the relevant statutes and rules.

(iii) A copy of any and all documents and other evidence that was submitted to Fidelity Corporation for purposes of rendering its initial action or decision.

(B) Within 10 days of service of the statement, the respondent shall file with the Office of Administrative Hearings, and serve the complainant or appellant by personal service or mail with, a written response to the statement.

(C) Within five days of service of the response, the complainant or appellant may file with the Office of Administrative Hearings a written reply to the response. If the complainant or appellant files a reply, the complainant or appellant shall serve a copy of the reply on the respondent by personal service or mail within two days of the filing.

(D) Each statement, response, or reply may be amended upon completion of discovery, except that the 120-day deadline for the proposed decision set forth in subdivision (b) shall not be extended unless upon a showing of good cause.

(6) With respect to an appeal of a claim for a loss of trust obligations that has been denied by respondent, the hearing shall be

limited to a determination of whether a loss, as defined under Section 17304, has occurred, such that respondent should pay on the claim.

(7) Nothing in this paragraph shall be construed to require the losing party to pay the other party's costs and expenses, including attorney's fees.

(8) To the extent of any conflict between any provision of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and this subdivision, this subdivision shall prevail.

(c) (1) If the appeal is on a claim for loss of trust obligations that has been denied by Fidelity Corporation and the claim involves all of the factors described in paragraph (3), the commissioner, upon the request of Fidelity Corporation and as provided herein, shall abstain from exercising jurisdiction and the appeal may be adjudicated in a court of competent jurisdiction upon the filing of an action by the member or successor in interest. Fidelity Corporation shall notify the commissioner, in writing, of the grounds for abstention of jurisdiction within five days of the filing of the request for a hearing by the member or successor in interest. The commissioner shall rule on the abstention of jurisdiction request within 10 days of the notice and the ruling shall be considered final. In making a determination on the request for abstention, the commissioner may examine and investigate all facts connected with the request for abstention and may request information from any person as deemed necessary.

(2) If the commissioner denies the request for abstention of jurisdiction, the hearing on the appeal shall be conducted in accordance with subdivision (b), except that compliance by the commissioner with paragraph (5) of subdivision (b) shall be within five days of the ruling denying the abstention request.

(3) The factors requiring abstention of jurisdiction by the commissioner are as follows:

(A) There is an allegation of a fraudulent escrow transaction involving an officer, director, trustee, stockholder, manager, or employee of the member as a principal to the transaction.

(B) The claim involves (i) the need to determine conflicting claims or disputes to real property or (ii) there is a potential for double recovery by any principal to an escrow.

(C) All other principals to escrows held by the member or successor in interest will not be substantially prejudiced by abstention.

CHAPTER 371

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

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony, provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" means any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(10) Arson, in violation of subdivision (a) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308.

(14) Kidnapping, in violation of subdivision (b) of Section 207.

(15) Kidnapping, as punished in subdivision (b) of Section 208.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the carjacking.

(18) A violation of Section 264.1.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law

if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 2. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any

felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" means any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(10) Arson, in violation of subdivision (a) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308.

(14) Kidnapping, in violation of subdivision (b) of Section 207.

(15) Kidnapping, as punished in subdivision (b) of Section 208.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the carjacking.

(18) Any robbery of the first degree punishable pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 213.

(19) A violation of Section 264.1.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 3. Section 2 of this bill incorporates amendments to Section 667.5 of the Penal Code proposed by both this bill and AB 115. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 667.5 of the Penal Code, and (3) this bill is enacted after AB 115, in which case Section 1 of this bill shall not become operative.

SEC. 4. The Legislature finds and declares that Section 1 of this act, which amends Section 667.5 of the Penal Code, is declaratory of existing law.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 372

An act to amend Section 1063.1 of the Insurance Code, relating to insurance.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 1063.1 of the Insurance Code is amended to read:

1063.1. As used in this article:

(a) "Member insurer" means an insurer required to be a member of the association in accordance with subdivision (a) of Section 1063, except and to the extent that the insurer is participating in an insolvency program adopted by the United States government.

(b) "Insolvent insurer" means a member insurer against which an order of liquidation or receivership with a finding of insolvency has been entered by a court of competent jurisdiction.

(c) (1) "Covered claims" means the obligations of an insolvent insurer, including the obligation for unearned premiums, (i) imposed by law and within the coverage of an insurance policy of the insolvent insurer; (ii) which were unpaid by the insolvent insurer; (iii) which are presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings; (iv) which were incurred prior to the date coverage under the policy terminated and prior to, on, or within 30 days after the date the liquidator was appointed; (v) for which the assets of the insolvent insurer are insufficient to discharge in full; (vi) in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state; and (vii) in the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

(2) "Covered claims" also include the obligations assumed by an assuming insurer from a ceding insurer where the assuming insurer subsequently becomes an insolvent insurer if, at the time of the insolvency of the assuming insurer, the ceding insurer is no longer admitted to transact business in this state. Both the assuming insurer and the ceding insurer shall have been member insurers at the time the assumption was made. "Covered claims" under this paragraph shall be required to satisfy the requirements of subparagraphs (i) to (vii), inclusive, of paragraph (1), except for the requirement that the claims be against policies of the insolvent insurer. The association shall have a right to recover any deposit, bond, or other assets that may have been required to be posted by the ceding company to the extent of covered claim payments and shall be subrogated to any rights the policyholders may have against the ceding insurer.

(3) "Covered claims" does not include any obligations arising from the following:

(i) Life, annuity, health, or disability insurance.

(ii) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.

(iii) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.

(iv) Credit insurance.

(v) Title insurance.

(vi) Ocean marine insurance or ocean marine coverage under any insurance policy including claims arising from the following: the Jones Act (46 U.S.C.A. Sec. 688), the Longshore and Harbor Workers' Compensation Act (33 U.S.C.A. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.

(vii) Any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses, except a special excess workers' compensation policy issued pursuant to paragraph (2) of subdivision (a) of Section 3702.8 of the Labor Code that cover all or any part of workers' compensation liabilities of an employer that was previously issued a certificate of consent to self-insure pursuant to subdivision (b) of Section 3700 of the Labor Code.

(4) "Covered claims" does not include any obligations of the insolvent insurer arising out of any reinsurance contracts, nor any obligations incurred after the expiration date of the insurance policy or after the insurance policy has been replaced by the insured or canceled at the insured's request, or after the insurance policy has been canceled by the association as provided in this chapter, or after the insurance policy has been canceled by the liquidator, nor any obligations to any state or to the federal government.

(5) "Covered claims" does not include any obligations to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

No insurer, insurance pool, or underwriting association may maintain, in its own name or in the name of its insured, any claim or legal action against the insured of the insolvent insurer for contribution, indemnity, or by way of subrogation, except insofar as, and to the extent only, that the claim exceeds the policy limits of the insolvent insurer's policy. In those claims or legal actions, the insured of the insolvent insurer is entitled to a credit or setoff in the amount of the policy limits of the insolvent insurer's policy, or in the amount of the limits remaining, where those limits have been diminished by the payment of other claims.

(6) "Covered claims," except in cases involving a claim for workers' compensation benefits or for unearned premiums, does not include any claim in an amount of one hundred dollars ($100) or less, nor that portion of any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer.

(7) "Covered claims" does not include that portion of any claim, other than a claim for workers' compensation benefits, that is in excess of five hundred thousand dollars ($500,000).

(8) "Covered claims" does not include any amount sought as a return of a premium under any policy providing retroactive insurance of a known loss or losses.

(9) "Covered claims" does not include any amount awarded as punitive or exemplary damages.

(10) "Covered claims" does not include (i) any claim to the extent it is covered by any other insurance of a class covered by the provisions of this article available to the claimant or insured nor (ii) any claim by any person other than the original claimant under the insurance policy in his or her own name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian or other personal representative or trustee in bankruptcy and does not include any claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.

(11) "Covered claims" does not include any obligations arising out of the issuance of an insurance policy written by the separate division of the State Compensation Insurance Fund pursuant to the provisions of Sections 11802 and 11803.

(12) "Covered claims" does not include any obligations of the insolvent insurer arising from any policy or contract of insurance issued or renewed prior to the insolvent insurer's admission to transact insurance in the State of California.

(13) "Covered claims" does not include surplus deposits of subscribers as defined in Section 1374.1.

(d) "Admitted to transact insurance in this state" means an insurer possessing a valid certificate of authority issued by the California Department of Insurance.

(e) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(f) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not in fact exist.

(g) "Claimant" means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(h) "Ocean marine insurance" includes marine insurance as defined in Section 103, except for inland marine insurance, as well as any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance such as hull and machinery, marine builders' risks, and marine protection and indemnity. Those perils and risks insured against include, without limitation, loss, damage, or expense or legal liability of the insured arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death for loss or damage to the property of the insured or another person.

SEC. 1.5. Section 1063.1 of the Insurance Code is amended to read:

1063.1. As used in this article:

(a) "Member insurer" means an insurer required to be a member of the association in accordance with subdivision (a) of Section 1063, except and to the extent that the insurer is participating in an insolvency program adopted by the United States government.

(b) "Insolvent insurer" means a member insurer against which an order of liquidation or receivership with a finding of insolvency has been entered by a court of competent jurisdiction.

(c) (1) "Covered claims" means the obligations of an insolvent insurer, including the obligation for unearned premiums, (i) imposed by law and within the coverage of an insurance policy of the insolvent insurer; (ii) which were unpaid by the insolvent insurer; (iii) which are presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings; (iv) which were incurred prior to the date coverage under the policy terminated and prior to, on, or within 30 days after the date the liquidator was appointed; (v) for which the assets of the insolvent insurer are insufficient to discharge in full; (vi) in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state; and (vii) in the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

(2) "Covered claims" also include the obligations assumed by an assuming insurer from a ceding insurer where the assuming insurer subsequently becomes an insolvent insurer if, at the time of the insolvency of the assuming insurer, the ceding insurer is no longer admitted to transact business in this state. Both the assuming insurer and the ceding insurer shall have been member insurers at the time the assumption was made. "Covered claims" under this paragraph shall be required to satisfy the requirements of subparagraphs (i) to

(vii), inclusive, of paragraph (1), except for the requirement that the claims be against policies of the insolvent insurer. The association shall have a right to recover any deposit, bond, or other assets that may have been required to be posted by the ceding company to the extent of covered claim payments and shall be subrogated to any rights the policyholders may have against the ceding insurer.

(3) "Covered claims" does not include obligations arising from the following:

(i) Life, annuity, health, or disability insurance.

(ii) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.

(iii) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.

(iv) Credit insurance.

(v) Title insurance.

(vi) Ocean marine insurance or ocean marine coverage under any insurance policy including claims arising from the following: the Jones Act (46 U.S.C.A. Sec. 688), the Longshore and Harbor Workers' Compensation Act (33 U.S.C.A. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.

(vii) Any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses, except a special excess workers' compensation policy issued pursuant to paragraph (2) of subdivision (a) of Section 3702.8 of the Labor Code that cover all or any part of workers' compensation liabilities of an employer that was previously issued a certificate of consent to self-insure pursuant to subdivision (b) of Section 3700 of the Labor Code.

(4) "Covered claims" does not include any obligations of the insolvent insurer arising out of any reinsurance contracts, nor any obligations incurred after the expiration date of the insurance policy or after the insurance policy has been replaced by the insured or canceled at the insured's request, or after the insurance policy has been canceled by the association as provided in this chapter, or after the insurance policy has been canceled by the liquidator, nor any obligations to any state or to the federal government.

(5) "Covered claims" does not include any obligations to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

An insurer, insurance pool, or underwriting association may not maintain, in its own name or in the name of its insured, any claim or legal action against the insured of the insolvent insurer for contribution, indemnity or by way of subrogation, except insofar as, and to the extent only, that the claim exceeds the policy limits of the insolvent insurer's policy. In those claims or legal actions, the insured of the insolvent insurer is entitled to a credit or setoff in the amount

of the policy limits of the insolvent insurer's policy, or in the amount of the limits remaining, where those limits have been diminished by the payment of other claims.

(6) "Covered claims," except in cases involving a claim for workers' compensation benefits or for unearned premiums, does not include any claim in an amount of one hundred dollars ($100) or less, nor that portion of any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer.

(7) "Covered claims" does not include that portion of any claim, other than a claim for workers' compensation benefits, that is in excess of five hundred thousand dollars ($500,000).

(8) "Covered claims" does not include any amount awarded as punitive or exemplary damages.

(9) "Covered claims" does not include (i) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured nor (ii) any claim by any person other than the original claimant under the insurance policy in his or her own name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian or other personal representative or trustee in bankruptcy and does not include any claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.

(10) "Covered claims" does not include any obligations arising out of the issuance of an insurance policy written by the separate division of the State Compensation Insurance Fund pursuant to Sections 11802 and 11803.

(11) "Covered claims" does not include any obligations of the insolvent insurer arising from any policy or contract of insurance issued or renewed prior to the insolvent insurer's admission to transact insurance in the State of California.

(12) "Covered claims" does not include surplus deposits of subscribers as defined in Section 1374.1.

(d) "Admitted to transact insurance in this state" means an insurer possessing a valid certificate of authority issued by the department.

(e) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(f) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not in fact exist.

(g) "Claimant" means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(h) "Ocean marine insurance" includes marine insurance as defined in Section 103, except for inland marine insurance, as well as any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance such as hull and machinery, marine builders' risks, and marine protection and indemnity. Those perils and risks insured against include, without limitation, loss, damage, or expense or legal liability of the insured arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death for loss or damage to the property of the insured or another person.

(i) "Unearned premium" means that portion of a premium that had not been earned because of the cancellation of the insolvent insurer's policy and is that premium remaining for the unexpired term of the insolvent insurer's policy. "Unearned premium" does not include any amount sought as return of a premium under any policy providing retroactive insurance of a known loss or return of a premium under any retrospectively rated policy or a policy subject to a contingent surcharge or any policy in which the final determination of the premium cost is computed after expiration of the policy and is calculated on the basis of actual loss experience during the policy period.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 1063.1 of the Insurance Code proposed by both this bill and SB 1277. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 1063.1 of the Insurance Code, and (3) this bill is enacted after SB 1277, in which case Section 1 of this bill shall not become operative.

CHAPTER 373

An act to amend Sections 20303 and 22050 of the Public Contract Code, and to amend Sections 100012, 100019, 100060, 100061, 100370, 100400, and 100483 of, to add Sections 100091 and 100115 to, and to

repeal Sections 100480 and 100481 of, the Public Utilities Code, relating to transportation.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 20303 of the Public Contract Code is amended to read:

20303. In case of an emergency, as defined under Section 1102, the board, upon adopting a resolution passed by a four-fifths vote of all its members, declaring and determining that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property, may expend, or enter into a contract involving the expenditure of, any sum needed in the emergency without observing the provisions requiring contracts, bids, or notice. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 2. Section 22050 of the Public Contract Code is amended to read:

22050. (a) (1) In the case of an emergency, a public agency, pursuant to a four-fifths vote of the governing body, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

(2) Before a governing body takes any action pursuant to paragraph (1), it shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency.

(b) (1) The governing body, by a four-fifths vote, may delegate, by resolution or ordinance, to the appropriate county administrative officer, city manager, chief engineer, or other nonelected agency officer the authority to order any action pursuant to paragraph (1) of subdivision (a).

(2) If the public agency has no county administrative officer, city manager, chief engineer, or other nonelected agency officer, the governing body, by a four-fifths vote, may delegate to an elected officer the authority to order any action specified in paragraph (1) of subdivision (a).

(3) If a person with authority delegated pursuant to paragraph (1) or (2) of this section orders any action specified in paragraph (1) of subdivision (a), that person shall report to the governing body, at its next meeting required pursuant to this section, the reasons justifying why the emergency will not permit a delay resulting from a

competitive solicitation for bids and why the action is necessary to respond to the emergency.

(c) (1) If the governing body orders any action specified in subdivision (a), the governing body shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action. If the governing body meets weekly, it may review the emergency action in accordance with this paragraph every 14 days.

(2) If a person with authority delegated pursuant to subdivision (b) orders any action specified in paragraph (1) of subdivision (a), the governing body shall initially review the emergency action not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, and at least at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action, unless a person with authority delegated pursuant to subdivision (b) has terminated that action prior to the governing body reviewing the emergency action and making a determination pursuant to this subdivision. If the governing body meets weekly, it may, after the initial review, review the emergency action in accordance with this paragraph every 14 days.

(3) When the governing body reviews the emergency action pursuant to paragraph (1) or (2), it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts.

(d) As used in this section, "public agency" has the same meaning as defined in Section 22002.

(e) A three-member governing body may take actions pursuant to subdivision (a), (b), or (c) by a two-thirds vote.

(f) This section applies only to emergency action taken pursuant to Sections 20133, 20168, 20193, 20134, 20168, 20205.1, 20213, 20223, 20233, 20253, 20273, 20283, 20293, 20303, 20313, 20331, 20567, 20586, 20604, 20635, 20645, 20685, 20736, 20751.1, 20806, 20812, 20914, 20918, 20926, 20931, 20941, 20961, 20991, 21020.2, 21024, 21031, 21043, 21061, 21072, 21081, 21091, 21101, 21111, 21121, 21131, 21141, 21151, 21161, 21171, 21181, 21191, 21196, 21203, 21212, 21221, 21231, 21241, 21251, 21261, 21271, 21290, 21311, 21321, 21331, 21341, 21351, 21361, 21371, 21381, 21391, 21401, 21411, 21421, 21431, 21441, 21451, 21461, 21472, 21482, 21491, 21501, 21511, 21521, 21531, 21541, 21552, 21567, 21572, 21581, 21591, 21601, 21618, 21624, 21631, 21641, and 22035.

SEC. 2.5. Section 22050 of the Public Contract Code is amended to read:

22050. (a) (1) In the case of an emergency, a public agency, pursuant to a four-fifths vote of the governing body, may repair or

replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

(2) Before a governing body takes any action pursuant to paragraph (1), it shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency.

(b) (1) The governing body, by a four-fifths vote, may delegate, by resolution or ordinance, to the appropriate county administrative officer, city manager, chief engineer, or other nonelected agency officer the authority to order any action pursuant to paragraph (1) of subdivision (a).

(2) If the public agency has no county administrative officer, city manager, chief engineer, or other nonelected agency officer, the governing body, by a four-fifths vote, may delegate to an elected officer the authority to order any action specified in paragraph (1) of subdivision (a).

(3) If a person with authority delegated pursuant to paragraph (1) or (2) of this section orders any action specified in paragraph (1) of subdivision (a), that person shall report to the governing body, at its next meeting required pursuant to this section, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency.

(c) (1) If the governing body orders any action specified in subdivision (a), the governing body shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action. If the governing body meets weekly, it may review the emergency action in accordance with this paragraph every 14 days.

(2) If a person with authority delegated pursuant to subdivision (b) orders any action specified in paragraph (1) of subdivision (a), the governing body shall initially review the emergency action not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, and at least at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action, unless a person with authority delegated pursuant to subdivision (b) has terminated that action prior to the governing body reviewing the emergency action and making a determination pursuant to this subdivision. If the governing body meets weekly, it may, after the initial review, review the emergency action in accordance with this paragraph every 14 days.

(3) When the governing body reviews the emergency action pursuant to paragraph (1) or (2), it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts.

(d) As used in this section, "public agency" has the same meaning as defined in Section 22002.

(e) A three-member governing body may take actions pursuant to subdivision (a), (b), or (c) by a two-thirds vote.

(f) This section applies only to emergency action taken pursuant to Sections 20133, 20168, 20193, 20134, 20168, 20205.1, 20213, 20223, 20233, 20253, 20273, 20283, 20293, 20303, 20313, 20331, 20567, 20586, 20604, 20635, 20645, 20685, 20711, 20736, 20751.1, 20792, 20806, 20812, 20914, 20918, 20926, 20931, 20941, 20961, 20991, 21020.2, 21024, 21031, 21043, 21061, 21072, 21081, 21091, 21101, 21111, 21121, 21131, 21141, 21151, 21161, 21171, 21181, 21191, 21196, 21203, 21212, 21221, 21231, 21241, 21251, 21261, 21271, 21290, 21311, 21321, 21331, 21341, 21351, 21361, 21371, 21381, 21391, 21401, 21411, 21421, 21431, 21441, 21451, 21461, 21472, 21482, 21491, 21501, 21511, 21521, 21531, 21541, 21552, 21567, 21572, 21581, 21591, 21601, 21618, 21624, 21631, 21641, 21700, and 22035.

SEC. 3. Section 100012 of the Public Utilities Code is amended to read:

100012. "Transit" means the transportation of passengers and their incidental baggage by any means, and includes rapid transit.

SEC. 4. Section 100019 of the Public Utilities Code is amended to read:

100019. "Person" includes any individual, firm, copartnership, association, corporation, trust, limited liability company, business trust or receiver or trustee or conservator for any thereof, but does not include a public agency, as defined in this chapter.

SEC. 5. Section 100060 of the Public Utilities Code is amended to read:

100060. (a) The government of the district shall be vested in a board of directors which shall consist of 12 members, as follows:

(1) Two representatives of the county and one alternate who shall be members of the board of supervisors of the county, appointed by the board of supervisors.

(2) Five representatives of the City of San Jose and one alternate who shall be city council members of the City of San Jose, appointed by the city council.

(3) Five city council members selected from among the city councils of all of the cities in the county, other than the City of San Jose, as provided by agreements among those cities. The agreements may provide for the appointment of alternates, who shall be city council members, for those city representatives.

(b) An alternate may vote in the place of a director represented by that alternate if the director is absent.

(c) To the extent possible, the appointing powers shall appoint individuals who have expertise, experience, or knowledge relative to transportation issues.

SEC. 6. Section 100061 of the Public Utilities Code is amended to read:

100061. The board of directors shall annually elect a chairperson who shall preside at all meetings. The board of directors shall also annually elect a vice chairperson, who, in the event of the chairperson's absence or inability to act, shall act as chairperson, and while so acting, shall have all of the authority of the chairperson.

SEC. 7. Section 100091 is added to the Public Utilities Code, to read:

100091. The secretary and those assistants that the board designates may administer all oaths or affirmations required by law, including the oath of office.

SEC. 8. Section 100115 is added to the Public Utilities Code, to read:

100115. The district may exercise any and all powers granted by any other law that, by its terms, is applicable to transit districts generally, to public agencies generally, or to any classification of districts or public agencies that includes a district of the type provided for in this part, but the district shall not exercise any power contrary to an express provision of this part.

SEC. 9. Section 100370 of the Public Utilities Code is amended to read:

100370. The board may establish a retirement system for the officers and employees of the district and provide for the payment of annuities, pensions, retirement allowances, disability payments, and death benefits or any of them. The adoption, terms, and conditions of any retirement system covering employees of the district in a bargaining unit represented by a labor organization shall be pursuant to a collective bargaining agreement between the labor organization and the district. For purposes of this section, "officers" does not include members of the board of directors.

SEC. 10. Section 100400 of the Public Utilities Code is amended to read:

100400. Whenever the board deems it necessary for the district to incur a bonded indebtedness for the acquisition, construction, or repair of any or all improvements, works, property, or facilities, authorized by this part or necessary or convenient for the carrying out of the powers of the district, or for any other purpose authorized by this part, the board shall, by ordinance, adopted by a vote of two-thirds of all members of the board, so declare and call an election to be held in the district for the purpose of submitting to the qualified voters thereof the proposition of incurring indebtedness by the issuance of bonds of the district, provided the total amount of bonds issued and outstanding pursuant to this article shall not exceed 15 percent of the assessed value of the taxable property of the district

as shown by the last equalized assessment roll of the County of Santa Clara. The ordinance shall state:

(a) The purposes for which the proposed debt is to be incurred, which may include all costs and estimated costs incidental to or connected with the accomplishment of those purposes, including, without limitation, engineering, inspection, legal, fiscal agents, financial consultant, and other fees; bond and other reserve funds; working capital; bond interest estimated to accrue during the construction period and for a period not to exceed three years thereafter; and expenses of all proceedings for the authorization, issuance, and sale of the bonds.

(b) The estimated cost of accomplishing those purposes.

(c) The amount of the principal of the indebtedness.

(d) The maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed 50 years from the date thereof or the date of each series thereof.

(e) The maximum rate of interest to be paid, which shall not exceed 7 percent per annum.

(f) The proposition to be submitted to the voters, which may include one or more purposes.

(g) The date of the election.

(h) The manner of holding the election and the procedure for voting for or against the measure.

(i) The ordinance may also contain a statement that the retail transaction and use tax mentioned in Article 9 (commencing with Section 100250) of Chapter 5 of this part, or a stated portion thereof, shall be levied, or continued to be levied, and used to the extent required to pay principal of and interest on the bonds as they become due, to provide for any sinking fund payments required therefor, or to create or maintain any reserve fund required therefor.

(j) The ordinance may also contain any other matters authorized by this part or any other law.

SEC. 11. Section 100480 of the Public Utilities Code is repealed.

SEC. 12. Section 100481 of the Public Utilities Code is repealed.

SEC. 13. Section 100483 of the Public Utilities Code is amended to read:

100483. The district may borrow money in anticipation of the sale of bonds that have been authorized to be issued, but have not been sold and delivered, and may issue negotiable bond anticipation notes therefor and may renew the same from time to time, but the maximum maturity of those notes, including the renewals thereof, shall not exceed five years from the date of delivery of such original notes. The notes may be paid from any moneys of the district available therefor and not otherwise pledged. If not previously otherwise paid, the notes shall be paid from the proceeds of the next sale of the bonds of the district in anticipation of which they were issued. The notes shall not be issued in any amount in excess of the aggregate amount of bonds which the district has been authorized to

issue, less the amount of any bonds of that authorized issue previously sold, and also less the amount of other bond anticipation notes therefor issued and then outstanding. The notes shall be issued and sold in the same manner as the bonds. The notes and the resolution or resolutions authorizing them may contain any provisions, conditions, or limitations which a resolution of the district authorizing the issuance of bonds may contain.

SEC. 14. Section 2.5 of this bill incorporates amendments to Section 22050 of the Public Contract Code proposed by both this bill and SB 79. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 22050 of the Public Contract Code, and (3) this bill is enacted after SB 79, in which case Section 2 of this bill shall not become operative.

CHAPTER 374

An act to add Sections 5003.06, 5003.10, 5003.12, and 5541.3 to the Public Resources Code, relating to parks and open space.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 5003.06 is added to the Public Resources Code, to read:

5003.06. (a) Notwithstanding any other provision of law, the director may grant, in trust, and subject to the conditions set forth in this section, all of the rights, title, and interest of the State of California in all lands located within the boundaries of Durham Ferry State Park, including any improvements on those lands, to the San Joaquin County Office of Education.

(b) The San Joaquin County Office of Education shall use and maintain any lands, and any improvements thereon, that are granted to the office pursuant to subdivision (a) only for park, recreational, or educational purposes.

SEC. 2. Section 5003.10 is added to the Public Resources Code, to read:

5003.10. (a) The department may convey, in trust for the development, improvement, operation, and maintenance of trails, to the County of San Mateo, for administration through its parks and recreation department, all rights, title, and interest held or owned by the state, including easements and rights-of-way, in real property located in the County of San Mateo between La Honda Road (Route 84) and Route 280, consisting of seven segments of land within the California Hiking and Riding Trail, as follows:

(1) Tract #4, book 3890, page 616, file #7250-T, recorded 11/15/60.

(2) Tract #9, book 1903, page 486, file #73287-I, recorded 7/21/50.

(3) Tract #10, book 2648, page 547, file #85234-L, recorded 9/13/54.

(4) Tract #11, book 1969, page 55, file #96904-I, recorded 11/02/50.

(5) Tract #11A, book 2495, page 463, file #17524-L, recorded 11/05/53.

(6) Tract #12, book 1995, page 5, file #6416-J, recorded 12/19/50.

(7) Tract #14, book 1904, page 667, file #73783-I, recorded 7/22/50.

(8) Tract #15, book 2023, page 658, file #17905-J, recorded 2/16/51.

(9) Tract #38, including a section of the trail that crosses Skyline Boulevard and proceeds adjacent to the eastern right-of-way line to Westborough Boulevard, where it again crosses Skyline Boulevard and extends west to Malagra Ridge, and that was acquired pursuant to a letter of permission issued by the State of California that was secured on 2/11/60.

(b) The County of San Mateo may develop, improve, operate, and maintain the real property conveyed pursuant to subdivision (a) as a part of the county's trail system.

SEC. 3. Section 5003.12 is added to the Public Resources Code, to read:

5003.12. The department may convey, in trust for the development, improvement, operation, and maintenance of trails, to the Midpeninsula Regional Open Space District all rights, title, and interest held or owned by the state, including easements and rights-of-way, in real property located in the County of San Mateo to the west of, and parallel to, Skyline Boulevard (Route 35) between Allen Road and Spanish Creek Road, south of La Honda Road (Route 84), consisting of five segments of land within the California Hiking and Riding Trail, as follows:

(a) Tract #17B, book 2518, page 221, file #27499, recorded 12/05/53.

(b) Tract #18A, book 2509, page 42, file #23256-L, recorded 12/07/53.

(c) Tract #19, book 2507, page 118, file #22328-L, recorded 12/02/53.

(d) Tract #19A, book 3064, page 526, file #73082-H, recorded 7/24/56.

(e) Tract #19B, book 2495, page 466, file #17525-L, recorded 11/05/53.

SEC. 4. Section 5541.3 is added to the Public Resources Code, to read:

5541.3. The district may develop, improve, operate, and maintain the real property conveyed pursuant to Section 5003.12 as a part of the Midpeninsula Regional Open Space District trail system.

SEC. 5. The Department of Parks and Recreation shall not convey any lands described in Sections 5003.06, 5003.10, and 5003.12 of the Public Resources Code unless the department includes appropriate deed restrictions in the conveyance documents that will require the granted lands to be used by the grantee, in perpetuity, for the public purposes specified in Sections 5003.06, 5003.10, and 5541.3 of the Public Resources Code, respectively.

CHAPTER 375

An act to amend Sections 134, 272, 1801, 1852.2, 1901, 3100, 3395, 3804, 4839, 31115, and 33301 of, to add Sections 600.3 and 1917 to, and to repeal Sections 183, 600.2, 662, and 3357 of, the Financial Code, and to amend Sections 53651.4 and 53661 of the Government Code, relating to financial institutions.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 134 of the Financial Code is amended to read:

134. "Contributed capital" means all of shareholders' equity other than retained earnings. However, nothing in this section shall prohibit a bank from transferring amounts from time to time from its retained earnings to its contributed capital, subject to any applicable statutes, regulations, and generally accepted accounting principles.

SEC. 2. Section 183 of the Financial Code is repealed.

SEC. 3. Section 272 of the Financial Code is amended to read:

272. The commissioner, in addition to the annual assessment, shall collect from each bank authorized to engage in the trust business, to defray the cost of examination, a fee not to exceed seventy-five dollars ($75) per hour for each examiner necessarily engaged in the examination of the trust company, trust business, or trust department. The commissioner shall assess the fee upon completion of the examination of the trust company or trust business and shall mail or otherwise deliver an invoice for the fee to the institution. The institution shall pay the fee within 30 days after the invoice is mailed or otherwise delivered to it.

SEC. 4. Section 600.2 of the Financial Code is repealed.

SEC. 5. Section 600.3 is added to the Financial Code, to read:

600.3. (a) In this section:

(1) "Assessment provision" means the provision in the articles of a bank that complies with the requirements of Section 600.2, as in effect immediately before the effective date of this section, or any predecessor statute.

(2) "Bank" means any (A) California state bank or (B) corporation organized under the laws of this state for the purpose of transacting business pursuant to Article 1 (commencing with Section 3500) of Chapter 19.

(b) On and after the effective date of this section, the assessment provision in the articles of a bank shall no longer be of any force or effect.

(c) Notwithstanding Sections 902 and 903 of the Corporations Code, a bank may, on or after the effective date of this section, amend its articles by deleting the assessment provision with the approval of its board alone and without any approval of its outstanding shares.

(d) (1) Any order issued before the effective date of this section by the commissioner pursuant to Section 662, as in effect immediately before the effective date of this section or any predecessor statute, shall, if and to the extent that the bank has not before that date levied and collected through sale of shares or otherwise, an assessment on its common shares, be deemed rescinded.

(2) Any proceeding commenced before the effective date of this section by a bank to assess its common shares in accordance with an order issued by the commissioner pursuant to Section 662, as in effect immediately before the effective date of this section or any predecessor statute, shall be terminated on the effective date of this section. On and after the effective date of this section, the bank shall take no further action to levy or collect the assessment on its common shares, and any lien on the common shares created by the assessment shall be deemed extinguished.

SEC. 6. Section 662 of the Financial Code is repealed.

SEC. 7. Section 1801 of the Financial Code is amended to read:

1801. (a) Fees shall be paid to, and collected by, the commissioner, as follows:

(1) The fee for filing with the commissioner an application for a license is five thousand dollars ($5,000).

(2) The fee for filing with the commissioner an application for approval to acquire control of a licensee is three thousand five hundred dollars ($3,500).

(3) The fee for filing with the commissioner an application for approval to establish a branch office of a licensee is two hundred fifty dollars ($250).

(4) The fee for filing with the commissioner an application for approval to establish a branch office of an agent is fifty dollars ($50).

(5) The fee for filing with the commissioner an application for extension of an approval to establish a branch office is one hundred dollars ($100).

(6) A licensee shall pay to the commissioner annually on or before July 1, a licensee fee of two thousand five hundred dollars ($2,500).

(7) A licensee shall pay to the commissioner annually on or before July 1, one hundred twenty-five dollars ($125) for each licensee branch office.

(8) A licensee shall pay to the commissioner annually on or before July 1, twenty-five dollars ($25) for each agent headquarter office and each agent branch office.

(9) Whenever the commissioner examines a licensee or any agent of a licensee, the licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(b) (1) Each fee for filing an application with the commissioner shall be paid at the time the application is filed with the commissioner.

(2) No fee for filing an application with the commissioner shall be refundable, regardless of whether the application is approved, denied, or withdrawn.

SEC. 8. Section 1852.2 of the Financial Code is amended to read:

1852.2. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing with the commissioner an application for a license shall be two thousand dollars ($2,000).

(b) The fee for issuing a license shall be twenty-five dollars ($25).

(c) Whenever the commissioner examines any licensee or any California agent of a licensee, that licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, in case it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

SEC. 9. Section 1901 of the Financial Code is amended to read:

1901. (a) Whenever, in the judgment of the commissioner, it is necessary or advisable to make an extra examination of or to devote any extraordinary attention to any bank, any foreign bank, or any office of a foreign bank, he or she has the authority to do so and to charge and collect from the bank or foreign bank, in the case of an extra examination, an amount not exceeding seventy-five dollars ($75) per hour for each examiner engaged in the examination and, in the case of extraordinary attention, an amount not exceeding the department's expenses in providing the extraordinary attention, including, but not limited to, compensation of employees.

(b) Whenever in the judgment of the commissioner it is necessary or expedient for any examiner engaged in any examination to travel outside this state, the commissioner may charge for the travel expenses of the examiner.

SEC. 10. Section 1917 is added to the Financial Code, to read:

1917. (a) The commissioner may, in his or her discretion, bring an action in the name of the people of this state in a superior court to enjoin a violation of, to enforce compliance with, or to collect a penalty or other liability imposed under, this division or any regulation or order issued under this division. The amount of any penalty or liability collected shall be deposited into the State Banking Account in the Financial Institutions Fund. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or other appropriate relief may be granted.

(b) A receiver, monitor, conservator, or other designated fiduciary officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise all of the powers of the defendant's officers, directors, partners, trustees, or of persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or any other designated fiduciary officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(c) If the commissioner determines it is in the public interest, the commissioner may include in an action authorized by subdivision (a), a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the person injured by the act or practice that is the subject matter of the action. The court has jurisdiction to award additional relief.

(d) The provision of subdivision (a) that authorizes the appointment of a monitor, receiver, conservator, or other designated fiduciary or officer of the court, and subdivisions (b) and (c) do not apply to any of the following:

(1) A state bank that is authorized by the commissioner to transact commercial banking or trust business.

(2) A national bank.

(3) A foreign (other state) bank that maintains a branch office in this state in accordance with federal law, the law of this state, and the law of the bank's domicile.

(4) A foreign (other nation) bank that is licensed by the commissioner to maintain a branch office or agency, as defined in Section 1700, in this state.

(5) A foreign (other nation) bank that maintains a federal branch or agency, as defined in Section 1700, in this state.

(e) The provisions of this section that authorize the commissioner to bring actions and seek relief are not intended to, and do not, affect

any right that any other person may have to bring the same or similar actions, or to seek the same or similar relief.

SEC. 11. Section 3100 of the Financial Code is amended to read:

3100. The commissioner may, whenever it appears to him or her that any of the conditions described in subdivisions (a) to (h), inclusive, exist with respect to a bank, forthwith take possession of the property and business of the bank and retain possession until the bank resumes business or its affairs are finally liquidated as herein provided. The bank, with the consent of the commissioner, may resume business subject to conditions prescribed by the commissioner. The term "bank" wherever used in this chapter includes trust companies.

(a) The tangible shareholders' equity of any bank is less than:

(1) In case the bank is a commercial bank, the greater of three percent of the bank's total assets or one million dollars ($1,000,000); or

(2) In case the bank is a trust company other than a commercial bank authorized to engage in trust business, one million dollars ($1,000,000).

(b) Any bank that has violated its articles or any law of this state.

(c) Any bank that is conducting its business in an unsafe or unauthorized manner.

(d) Any bank that refuses to submit its books, papers, and affairs to the inspection of any examiner.

(e) Any officer of any bank who refuses to be examined upon oath touching the concerns of the bank.

(f) Any bank that has failed to pay any of its obligations as they came due or that is reasonably expected to be unable to pay its obligations as they come due.

(g) Any bank that is in a condition that it is unsound, unsafe, or inexpedient for it to transact business.

(h) Any bank that neglects or refuses to observe any order of the commissioner made pursuant to Section 1913 unless the enforcement of the order is restrained in a proceeding brought by the bank.

SEC. 12. Section 3357 of the Financial Code, as amended by Section 398 of Chapter 1064 of the Statutes of 1996, is repealed.

SEC. 13. Section 3395 of the Financial Code, as amended by Section 406 of Chapter 1064 of the Statutes of 1996, is amended to read:

3395. Any person or any bank violating any provision of the foregoing sections of this article shall be liable to the people of the state in the amount of one hundred dollars ($100) a day or part thereof during which that violation continues.

SEC. 14. Section 3804 of the Financial Code is amended to read:

3804. Fees shall be paid to and collected by the commissioner as follows:

(a) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank for approval to establish a facility is two hundred fifty dollars ($250).

(b) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank that is licensed pursuant to Article 4 (commencing with Section 3860) to maintain a facility for approval to relocate or to close the facility is one hundred dollars ($100).

(c) The fee for issuing a license pursuant to Article 4 (commencing with Section 3860) is twenty-five dollars ($25).

(d) Each foreign (other state) state bank that on June 1 of any year maintains one or more California branch offices shall pay, on or before the following July 1, a fee of one thousand dollars ($1,000) per California branch office. However, the minimum fee paid by a foreign (other state) state bank under this subdivision shall be not less than three thousand dollars ($3,000) and the maximum fee shall be not more than fifty thousand dollars ($50,000).

(e) Each foreign (other state) bank that on June 1 of any year maintains a facility but no California branch office shall pay, on or before the following July 1, a fee of two hundred fifty dollars ($250) for each facility.

(f) If the commissioner makes an examination in connection with a pending application, as described in subdivision (a) or (b), the applicant shall pay a fee for the examination of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(g) If the commissioner makes an examination of a foreign (other state) state bank that maintains a California branch office, the bank shall pay a fee for the examination of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(h) If the commissioner makes an examination of a facility of an uninsured foreign (other state) bank licensed under Article 4 (commencing with Section 3860), the bank shall pay a fee for the examination of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(i) If the commissioner makes an examination of a facility of an insured foreign (other state) bank that does not maintain a California branch office, the bank shall pay a fee for the examination of seventy-five ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary

for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

SEC. 15. Section 4839 of the Financial Code is amended to read:

4839. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing an application for approval of a sale under this division shall be two thousand five hundred dollars ($2,500).

(b) The fee for filing an application for approval of a merger under this division shall be two thousand five hundred dollars ($2,500).

(c) (1) The fee for filing an application for approval of a conversion under this division shall be five thousand dollars ($5,000).

(2) The fee for issuing a certificate of authority or license under subdivision (a) of Section 4928 or subdivision (a) of Section 4948 shall be two thousand five hundred dollars ($2,500).

(d) The fee for issuing a certificate of authority or license under any other provision of this division shall be twenty-five dollars ($25).

(e) The fee for issuing a certificate under Section 4862, 4879.17, 4891, 4930, or 4952 shall be twenty-five dollars ($25).

(f) In case the commissioner makes an examination in connection with a pending application, as described in paragraph (1), (2), (3), or (4), the applicant shall pay a fee for the examination in the sum of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(1) Examination of the selling depository corporation in connection with a pending application for approval of a sale of a whole business unit (as defined in Section 4840) under Article 2 (commencing with Section 4845) of Chapter 3.

(2) Examination of the partial business unit (as defined in Section 4840) to be sold and any related affairs of the selling depository corporation in connection with a pending application for approval of a sale of a partial business unit (as defined in Section 4840) under Article 2 (commencing with Section 4845) of Chapter 3.

(3) Examination of the purchasing depository corporation in connection with a pending application for approval of a sale of a whole business unit (as defined in Section 4880) under Article 3.5 (commencing with Section 4876.01) of Chapter 3 or of a partial business unit (as defined in Section 4880) under Article 4.5 (commencing with Section 4878.01) of Chapter 3.

(4) Examination of the surviving depository corporation in connection with a pending application for approval of a merger under Article 4 (commencing with Section 4908.01) of Chapter 4.

(5) Examination of the disappearing depository corporation in connection with a pending application for approval of a merger under Article 1 (commencing with Section 4880) or Article 2 (commencing with Section 4895.01) of Chapter 4.

(6) Examination of the converting depository corporation in connection with a pending application for approval of a conversion under Article 1 (commencing with Section 4920) or Article 2 (commencing with Section 4940) of Chapter 5.

SEC. 16. Section 31115 of the Financial Code is amended to read:

31115. (a) Fees shall be paid to, and collected by, the commissioner, as follows:

(1) The fee for filing with the commissioner an application for a license shall be two thousand dollars ($2,000).

(2) The fee for filing with the commissioner an application for approval to acquire control of a licensee shall be one thousand dollars ($1,000).

(3) The fee for filing with the commissioner an application for approval for a licensee to merge with another corporation; an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee, shall be one thousand dollars ($1,000). However, whenever two or more applications relating to the same merger, purchase, or sale are filed with the commissioner, the fee for filing each application shall be the quotient determined by dividing one thousand dollars ($1,000) by the number of the applications.

(4) The fee for filing with the commissioner an application for approval to relocate the head office of a licensee shall be one hundred dollars ($100).

(5) The fee for issuing a license shall be twenty-five dollars ($25).

(6) Each person that is licensed under this division on June 1 of any year shall pay, on or before the following July 1, a fee of two thousand dollars ($2,000).

(7) Whenever the commissioner examines any licensee or any affiliate of a licensee, that licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, in case it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(b) (1) Each fee for filing an application with the commissioner shall be paid at the time when the application is filed with the commissioner.

(2) No fee for filing an application with the commissioner shall be refundable, regardless of whether the application is approved, denied, withdrawn, or abandoned.

SEC. 17. Section 33301 of the Financial Code is amended to read:

33301. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing with the commissioner an application for a license shall be two thousand dollars ($2,000).

(b) The fee for issuing a license shall be twenty-five dollars ($25).

(c) Whenever the commissioner examines any licensee or any California agent of a licensee, that licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, in case it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

SEC. 18. Section 53651.4 of the Government Code is amended to read:

53651.4. (a) A depository that uses eligible securities of the class described in subdivision (m) of Section 53651 shall, within 90 days after the close of each calendar year or within a longer period as the administrator may specify, file with the administrator a report of an independent certified public accountant regarding compliance with this article and with regulations and orders issued by the administrator under this article with respect to eligible securities of that class. The report shall be based upon the audit, shall contain the information, and shall be in the form the administrator may prescribe. The depository shall provide a copy of the report to the treasurer on request.

(b) If a depository that is a state bank files with the administrator, not less than 90 days before the beginning of the calendar year, a notice that it elects to be examined by the administrator instead of filing a report of an independent certified public accountant under subdivision (a) for that calendar year, the depository shall be exempt from subdivision (a) for that calendar year and shall for that calendar year be subject to examination by the administrator regarding compliance with this article and with regulations and orders under this article with respect to eligible securities of the class described in subdivision (m) of Section 53651. The administrator shall provide a report to a treasurer with deposits in the examined state bank upon request of the treasurer.

(c) A national bank may apply to the administrator to be examined, and the administrator, in his or her discretion, may examine a national bank for the purposes of satisfying the requirements of subdivision (a). The administrator shall provide a report to a treasurer with deposits in the examined national bank upon request of the treasurer.

(d) Whenever the administrator examines a depository pursuant to subdivision (b) or (c), the depository shall pay, within 30 days after receipt of a statement from the administrator, a fee of seventy-five dollars ($75) per hour for each examiner engaged in the examination.

SEC. 19. Section 53661 of the Government Code, as amended by Section 789 of Chapter 1064 of the Statutes of 1996, is amended to read:

53661. (a) The State Treasurer shall act as Administrator of Local Agency Security and shall be responsible for the administration of

Sections 53638, 53651, 53651.2, 53651.4, 53651.6, 53652, 53654, 53655, 53656, 53657, 53658, 53659, 53660, 53661, 53663, 53664, 53665, 53666, and 53667.

(b) The administrator shall have the powers necessary or convenient to administer and enforce the sections specified in subdivision (a).

(c) (1) The administrator shall issue regulations consistent with law as the administrator may deem necessary or advisable in executing the powers, duties, and responsibilities assigned by this article. The regulations may include regulations prescribing standards for the valuation, marketability, and liquidity of the eligible securities of the class described in subdivision (m) of Section 53651, regulations prescribing procedures and documentation for adding, withdrawing, substituting, and holding pooled securities, and regulations prescribing the form, content, and execution of any application, report, or other document called for in any of the sections specified in subdivision (a) or in any regulation or order issued under any of those sections.

(2) The administrator, for good cause, may waive any provision of any regulation adopted pursuant to paragraph (1) or any order issued under this article, where the provision is not necessary in the public interest.

(d) The administrator may enter into any contracts or agreements as may be necessary, including joint underwriting agreements, to sell or liquidate eligible securities securing local agency deposits in the event of the failure of the depository or if the depository fails to pay all or part of the deposits of a local agency.

(e) The administrator shall require from every depository a report certified by the agent of depository listing all securities, and the market value thereof, which are securing local agency deposits together with the total deposits then secured by the pool, to determine whether there is compliance with Section 53652. These reports may be required whenever deemed necessary by the administrator, but shall be required at least four times each year at the times designated by the Comptroller of the Currency for reports from national banking associations. These reports shall be filed in the office of the administrator by the depository within 20 business days of the date the administrator calls for the report.

(f) The administrator may have access to reports of examination made by the Comptroller of the Currency insofar as the reports relate to national banking association trust department activities which are subject to this article.

(g) (1) The administrator shall require the immediate substitution of an eligible security, where the substitution is necessary for compliance with Section 53652, if (i) the administrator determines that a security listed in Section 53651 is not qualified to secure public deposits, or (ii) a treasurer, who has deposits secured by the securities pool, provides written notice to the administrator

and the administrator confirms that a security in the pool is not qualified to secure public deposits.

(2) The failure of a depository to substitute securities, where the administrator has required the substitution, shall be reported by the administrator promptly to those treasurers having money on deposit in that depository and, in addition, shall be reported as follows:

(A) When that depository is a national bank, to the Comptroller of the Currency of the United States.

(B) When that depository is a state bank, to the Commissioner of Financial Institutions.

(C) When that depository is a federal association, to the Office of Thrift Supervision.

(D) When that depository is a savings association, to the Commissioner of Financial Institutions.

(E) When that depository is a federal credit union, to the National Credit Union Administration.

(F) When that depository is a state credit union or a federally insured industrial loan company, to the Commissioner of Financial Institutions.

(h) The administrator may require from each treasurer a registration report and at appropriate times a report stating the amount and location of each deposit together with other information deemed necessary by the administrator for effective operation of this article. The facts recited in any report from a treasurer to the administrator are conclusively presumed to be true for the single purpose of the administrator fulfilling responsibilities assigned to him or her by this article and for no other purpose.

(i) (1) If, after notice and opportunity for hearing, the administrator finds that any depository or agent of depository has violated or is violating, or that there is reasonable cause to believe that any depository or agent of depository is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued under any of those sections, the administrator may order the depository or agent of depository to cease and desist from the violation or may by order suspend or revoke the authorization of the agent of depository. The order may require the depository or agent of depository to take affirmative action to correct any condition resulting from the violation.

(2) (A) If the administrator makes any of the findings set forth in paragraph (1) with respect to any depository or agent of depository and, in addition, finds that the violation or the continuation of the violation is likely to seriously prejudice the interests of treasurers, the administrator may order the depository or agent of depository to cease and desist from the violation or may suspend or revoke the authorization of the agent of depository. The order may require the depository or agent of depository to take affirmative action to correct any condition resulting from the violation.

(B) Within five business days after an order is issued under subparagraph (A), the depository or agent of depository may file with the administrator an application for a hearing on the order. The administrator shall schedule a hearing at least 30 days, but not more than 40 days, after receipt of an application for a hearing or within a shorter or longer period of time agreed to by a depository or an agent of depository. If the administrator fails to schedule the hearing within the specified or agreed to time period, the order shall be deemed rescinded. Within 30 days after the hearing, the administrator shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded. The right of a depository or agent of depository to which an order is issued under subparagraph (A) to petition for judicial review of the order shall not be affected by the failure of the depository or agent of depository to apply to the administrator for a hearing on the order pursuant to this subparagraph.

(3) Whenever the administrator issues a cease and desist order under paragraph (1) or (2), the administrator may in the order restrict the right of the depository to withdraw securities from a security pool; and, in that event, both the depository to which the order is directed and the agent of depository which holds the security pool shall comply with the restriction.

(4) In case the administrator issues an order under paragraph (1) or (2) suspending or revoking the authorization of an agent of depository, the administrator may order the agent of depository at its own expense to transfer all pooled securities held by it to such agent of depository as the administrator may designate in the order. The agent of depository designated in the order shall accept and hold the pooled securities in accordance with this article and regulations and orders issued under this article.

(j) In the discretion of the administrator, whenever it appears to the administrator that any person has violated or is violating, or that there is reasonable cause to believe that any person is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued thereunder, the administrator may bring an action in the name of the people of the State of California in the superior court to enjoin the violation or to enforce compliance with those sections or any regulation or order issued thereunder. Upon a proper showing a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and the court may not require the administrator to post a bond.

(k) In addition to other remedies, the administrator shall have the power and authority to impose the following sanctions for noncompliance with the sections specified in subdivision (a) after a hearing if requested by the party deemed in noncompliance. Any fine assessed pursuant to this subdivision shall be paid within 30 days after receipt of the assessment.

(1) Assess against and collect from a depository a fine not to exceed two hundred fifty dollars ($250) for each day the depository fails to maintain with the agent of depository securities as required by Section 53652.

(2) Assess against and collect from a depository a fine not to exceed one hundred dollars ($100) for each day beyond the time period specified in subdivision (b) of Section 53663 the depository negligently or willfully fails to file in the office of the administrator a written report required by that section.

(3) Assess against and collect from a depository a fine not to exceed one hundred dollars ($100) for each day beyond the time period specified in subdivision (e) that a depository negligently or willfully fails to file in the office of the administrator a written report required by that subdivision.

(4) Assess and collect from an agent of depository a fine not to exceed one hundred dollars ($100) for each day the agent of depository fails to comply with any of the applicable sections specified in subdivision (a) or any applicable regulation or order issued thereunder.

(*l*) (1) In the event that a depository or agent of depository fails to pay a fine assessed by the administrator pursuant to subdivision (k) within 30 days of receipt of the assessment, the administrator may assess and collect an additional penalty of 5 percent of the fine for each month or part thereof that the payment is delinquent.

(2) If a depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers with deposits in the depository.

(3) If an agent of depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers who have authorized the agent of depository as provided in Sections 53649 and 53656, and may by order revoke the authorization of the agent of depository as provided in subdivision (i).

CHAPTER 376

An act to amend Section 751 of the Evidence Code, and to amend Section 68561 of the Government Code, relating to interpreters.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 751 of the Evidence Code is amended to read:

751. (a) An interpreter shall take an oath that he or she will make a true interpretation to the witness in a language that the witness understands and that he or she will make a true interpretation of the witness' answers to questions to counsel, court, or jury, in the English language, with his or her best skill and judgment.

(b) In any proceeding in which a deaf or hard-of-hearing person is testifying under oath, the interpreter certified pursuant to subdivision (f) of Section 754 shall advise the court whenever he or she is unable to comply with his or her oath taken pursuant to subdivision (a).

(c) A translator shall take an oath that he or she will make a true translation in the English language of any writing he or she is to decipher or translate.

(d) An interpreter regularly employed by the court and certified or registered in accordance with Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code, or a translator regularly employed by the court, may file an oath as prescribed by this section with the clerk of the court. The filed oath shall serve for all subsequent court proceedings until the appointment is revoked by the court.

SEC. 2. Section 68561 of the Government Code is amended to read:

68561. (a) Except for good cause as provided in subdivision (c), any person who interprets in a court proceeding using a language designated by the Judicial Council under subdivision (a) of Section 68562 shall be a certified court interpreter as defined in Section 68566 for the language used.

(b) Interpreters named and maintained on the list of recommended court interpreters (1) previously established by the State Personnel Board, or (2) established by an entity provisionally approved under subdivision (b) of Section 68562, shall be deemed certified under this article until January 1, 1996. After that date, those interpreters shall not be deemed certified unless they have complied with the procedures for certification adopted under subdivision (c) of Section 68562. Interpreters approved by the State Personnel Board or any other agency or entity for use in administrative hearings or nonjudicial settings shall not be deemed certified as court interpreters. These interpreters also shall not be used in court proceedings unless they are qualified by the court under subdivision (c) or (d).

(c) A court may for good cause appoint an interpreter for a language designated by the Judicial Council who does not hold a court interpreter certificate. The court shall follow the good cause and qualification procedures and guidelines adopted by the Judicial Council.

(d) Any person who interprets in a court proceeding using a language not designated by the Judicial Council shall be qualified by the court under the qualification procedures and guidelines adopted

by the Judicial Council. If this qualified interpreter also passes an English fluency examination offered by a testing entity approved by the Judicial Council, this person shall be designated a "registered interpreter."

(e) Interpreters shall establish to the court that they meet the requirements of this section under procedures adopted by the Judicial Council. The court record shall show that the interpreter (1) is a certified court interpreter as defined by Section 68566 for the language used, or (2) was qualified by the court under subdivision (c), after a finding of good cause, or under subdivision (d), if the language is not designated by the Judicial Council.

CHAPTER 377

An act to amend Section 1812.206 of the Civil Code, relating to business regulation.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 1812.206 of the Civil Code is amended to read:

1812.206. At least 48 hours prior to the execution of a seller assisted marketing plan contract or agreement or at least 48 hours prior to the receipt of any consideration, whichever occurs first, the seller or his or her representative shall provide to the prospective purchaser in writing a document entitled "SELLER ASSISTED MARKETING PLAN INFORMATION SHEET." The seller may combine the information required under this section with the information required under Section 1812.205 and, if done, shall utilize the single title "DISCLOSURES REQUIRED BY CALIFORNIA LAW," and the title page required by Section 1812.205. If a combined document is used, it shall be given at the time required by Section 1812.205, provided that this time meets the 48-hour test of this section. The information sheet required by this section shall contain the following:

(a) The name of and the office held by the seller's officers, directors, trustees and general or limited partners, as the case may be, and the names of those individuals who have management responsibilities in connection with the seller's business activities.

(b) A statement whether the seller, any person identified in subdivision (a), and any other company managed by a person identified in subdivision (a):

(1) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if the felony or

misdemeanor involved an alleged violation of this title, fraud, embezzlement, fraudulent conversion or misappropriation of property.

(2) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged a violation of this title, fraud, embezzlement, fraudulent conversion or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful or deceptive business practices.

(3) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department, including, but not limited to, action affecting any vocational license.

The statements required by paragraphs (1), (2) and (3) of this subdivision shall set forth the court, the docket number of the matter, the date of the conviction or of the judgment and, when involved, the name of the governmental agency that brought the action resulting in the conviction or judgment.

(4) Has at any time during the previous seven fiscal years filed in bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other person, as defined in subdivision (b) of Section 1812.201, that has so filed or was so adjudicated or reorganized, during or within one year after the period that the individual held such position. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof, the court which exercised jurisdiction, and the docket number of the matter shall be set forth.

(c) The length of time the seller:

(1) Has sold seller assisted marketing plans.

(2) Has sold the specific seller assisted marketing plan being offered to the purchaser.

(d) If the seller is required to secure a bond or establish a trust account pursuant to the requirements of Section 1812.204, the information sheet shall state either:

(1) "Seller has secured a bond issued by

_____,

(name and address of surety company)

a surety company admitted to do business in this state. Before signing a contract to purchase this seller assisted marketing plan, you should check with the surety company to determine the bond's current status," or

(2) "Seller has deposited with the office of the Attorney General information regarding its trust account. Before signing a contract to purchase this seller assisted marketing plan, you should check with

the Attorney General to determine the current status of the trust account."

(e) A copy of a recent, not more than 12 months old, financial statement of the seller, together with a statement of any material changes in the financial condition of the seller from the date thereof. Such financial statement shall either be audited or be under penalty of perjury signed by one of the seller's officers, directors, trustees or general or limited partners. The declaration under penalty of perjury shall indicate that to the best of the signatory's knowledge and belief the information in the financial statement is true and accurate; the date of signature and the location where signed shall also be indicated. Provided, however, that where a seller is a subsidiary of another corporation which is permitted by generally accepted accounting standards to prepare financial statements on a consolidated basis, the above information may be submitted in the same manner for the parent if the corresponding financial statement of the seller is also provided and the parent absolutely and irrevocably has agreed to guarantee all obligations of the seller.

(f) An unexecuted copy of the entire seller assisted marketing plan contract.

SEC. 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 378

An act to amend Section 10083 of the Insurance Code, relating to earthquake insurance.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 10083 of the Insurance Code is amended to read:

10083. (a) The offer of coverage required by Section 10081 may be made prior to, concurrent with, or within 60 days following the

issuance or renewal of a residential property insurance policy. If the offer of coverage is mailed to the named insured or applicant, it shall be mailed to the mailing address shown on the policy of residential property insurance or on the application. The offer of earthquake coverage shall contain the following language in at least 10-point boldface type:

YOUR POLICY DOES NOT PROVIDE COVERAGE AGAINST THE PERIL OF EARTHQUAKE.

CALIFORNIA LAW REQUIRES THAT EARTHQUAKE COVERAGE BE OFFERED TO YOU AT YOUR OPTION.

WARNING: THESE COVERAGES MAY DIFFER SUBSTANTIALLY FROM AND PROVIDE LESS PROTECTION THAN THE COVERAGE PROVIDED BY YOUR HOMEOWNERS' INSURANCE POLICY. THERE ARE EXCLUSIONS AND LIMITATIONS SUCH AS OUTBUILDINGS, SWIMMING POOLS, MASONRY FENCES, AND MASONRY CHIMNEYS. THIS DISCLOSURE FORM CONTAINS ONLY A GENERAL DESCRIPTION OF COVERAGES AND IS NOT PART OF YOUR EARTHQUAKE INSURANCE POLICY. ONLY THE SPECIFIC PROVISIONS OF YOUR POLICY WILL DETERMINE WHETHER A PARTICULAR LOSS IS COVERED AND, IF SO, THE AMOUNT PAYABLE.

THE COVERAGE, SUBJECT TO POLICY PROVISIONS, MAY BE PURCHASED AT ADDITIONAL COST ON THE FOLLOWING TERMS:

(A) AMOUNT OF DWELLING COVERAGE: _____

(B) APPLICABLE DEDUCTIBLE: _____ IF YOUR LOSS IS BELOW THIS AMOUNT, YOU MAY NOT RECEIVE ANY PAYMENT FROM YOUR COVERAGE.

YOUR INSURANCE COMPANY OR AGENT WILL PROVIDE WRITTEN NOTICE AS TO HOW THE DEDUCTIBLE APPLIES TO THE MARKET VALUE OF YOUR COVERAGE, THE INSURED VALUE OF YOUR COVERAGE, OR THE REPLACEMENT VALUE OF YOUR COVERAGE.

(C) CONTENTS COVERAGE: _____

IF YOUR LOSS DOES NOT EXCEED THE DEDUCTIBLE FOR THE DWELLING, YOU WILL NOT RECEIVE ANY PAYMENT FOR THIS COVERAGE.

YOUR INSURANCE COMPANY OR AGENT WILL PROVIDE WRITTEN NOTICE AS TO HOW THE DEDUCTIBLE APPLIES TO THE AMOUNT YOU RECEIVE PURSUANT TO THIS COVERAGE.

(D) ADDITIONAL LIVING EXPENSES: _____

(E) RATE OR PREMIUM: _____

YOU MUST ASK THE COMPANY TO ADD EARTHQUAKE COVERAGE WITHIN 30 DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR IT SHALL BE CONCLUSIVELY PRESUMED THAT YOU HAVE NOT ACCEPTED THIS OFFER.

THIS COVERAGE SHALL BE EFFECTIVE ON THE DAY YOUR ACCEPTANCE OF THIS OFFER IS RECEIVED BY US.

(b) When the insurer, agent, or broker establishes delivery of the disclosure form by obtaining the signature of the applicant or insured, or when an insurer, agent, or broker provides the applicant with the disclosure form and the applicant does not return a signed acknowledgment of receipt within 60 days of the date it was provided, there shall be a conclusive presumption that the insurer, agent, or broker has complied with the disclosure requirements of this section.

(c) The offer may contain additional provisions not in conflict with or in derogation of this section.

(d) The commissioner may only approve modifications to the language prescribed in subdivision (a) if all of the following conditions are met:

(1) The modifications are not in conflict with or in derogation of any provision of this section or Section 10089.

(2) The modifications are necessary to ensure that the disclosure statement accurately reflects the coverage actually provided by the policy being offered.

(3) The modifications are strictly limited to necessary changes so that the modified disclosure statement is otherwise identical to the disclosure statement prescribed in this section.

(e) Use of the language prescribed by this section, or modified language approved pursuant to subdivision (d), shall constitute compliance with the requirements of Section 10081 by an insurer subject thereto.

CHAPTER 379

An act to amend Section 27174.2 of the Streets and Highways Code, relating to trespass.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 27174.2 of the Streets and Highways Code is amended to read:

27174.2. (a) Every person who, without permission of the board or its authorized officers or agents, climbs upon any railing, cable, suspender rope, tower, or superstructure of any district toll bridge, or otherwise trespasses on any portion of the bridge that is not intended for public use, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding one year, by a fine not

exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

(b) Every person who trespasses on district property other than that referred to in subdivision (a) is guilty of a misdemeanor.

(c) If the court grants probation to any person punished under subdivision (a), in addition to any other terms or conditions imposed by the court, the court shall impose as a condition of that probation that the person perform not less than 40 hours and not more than 160 hours of community service in the county in which the violation occurred. To the extent practicable, the service shall involve work in homeless shelters, programs designed for the care of drug abuse, and hospices. The service shall be performed during a time that does not interfere with the person's school attendance or employment.

(d) Any person convicted of a violation of subdivision (a) of this section shall reimburse the bridge district for costs resulting from the violation. The court shall consider the costs to the bridge district and shall prorate the defendant's share of the costs based on the defendant's responsibility for the acts and in accordance with the defendant's ability to pay, as the court deems appropriate in the interest of justice.

(e) This section does not apply to persons engaged in the operation, maintenance, or repair of a bridge.

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 380

An act to amend Sections 4836 and 4840 of the Business and Professions Code, relating to veterinary medicine.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 4836 of the Business and Professions Code is amended to read:

4836. (a) The board shall adopt regulations establishing animal health care tasks and an appropriate degree of supervision required for those tasks that may be performed only by a registered veterinary technician or a licensed veterinarian.

(b) The board also may adopt regulations establishing animal health care tasks that may be performed by an unregistered assistant as well as by a registered veterinary technician or a licensed veterinarian. The board shall establish an appropriate degree of supervision by a registered veterinary technician or a licensed veterinarian over an unregistered assistant for any tasks established under this subdivision and the degree of supervision for any of those tasks shall be higher than, or equal to, the degree of supervision required when a registered veterinary technician performs the task.

(c) The board may adopt regulations, as needed, to define subdivision (c) of Section 4840, including, but not limited to, procedures for citations and fines, in accordance with Section 125.9.

SEC. 2. Section 4840 of the Business and Professions Code is amended to read:

4840. (a) Registered veterinary technicians and unregistered assistants are approved to perform those animal health care services prescribed by law under the supervision of a veterinarian licensed or authorized to practice in this state.

(b) Registered veterinary technicians may perform animal health care services on those animals impounded by a state, county, city, or city and county agency pursuant to the direct order, written order or telephonic order of a veterinarian licensed or authorized to practice in this state.

(c) Registered veterinary technicians may apply for registration from the federal Drug Enforcement Administration that authorizes the direct purchase of sodium pentobarbital for the performance of euthanasia as provided for in of subdivision (d) of Section 4827 without the supervision or authorization of a licensed veterinarian.

CHAPTER 381

An act to amend Sections 26945 and 26946 of, and to add Section 26945.1 to, the Government Code, relating to county officers.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 26945 of the Government Code is amended to read:

26945. No person shall hereafter be elected or appointed to the office of county auditor of any county unless the person meets at least one of the following criteria:

(a) The person possesses a valid certificate issued by the California State Board of Accountancy under Chapter 1 (commencing with Section 5000) of Division 3 of the Business and Professions Code showing the person to be, and a permit authorizing the person to practice as, a certified public accountant or as a public accountant.

(b) The person possesses a baccalaureate degree from an accredited university, college, or other four-year institution, with a major in accounting or its equivalent, as described in subdivision (a) of Section 5081.1 of the Business and Professions Code, and has served within the last five years in a senior fiscal management position in a county, city, or other public agency, a private firm, or a nonprofit organization, dealing with similar fiscal responsibilities, for a continuous period of not less than three years.

(c) The person possesses a certificate issued by the Institute of Internal Auditors showing the person to be a designated professional internal auditor, with a minimum of 16 college semester units, or their equivalent, in accounting, auditing, or finance.

(d) The person has served as county auditor, chief deputy county auditor, or chief assistant county auditor for a continuous period of not less than three years.

SEC. 2. Section 26945.1 is added to the Government Code, to read:

26945.1. (a) Any person serving in the capacity of county auditor shall complete at least 40 hours of qualifying continuing education, pursuant to subdivision (b), for each two-year period, beginning January 1, 1998, and completing at least 10 hours in each year of the two-year period. At least 20 of the 40 hours of continuing education shall be obtained in governmental accounting, auditing, or related subjects.

(b) Qualifying continuing education may be obtained in the areas of accounting, auditing, or related subjects. In addition, qualifying continuing education may be obtained in any other subject, if it can be demonstrated that the specific educational program contributes to professional competence.

(c) With respect to a county auditor who is a licensee of the California Board of Accountancy, or of the accountancy licensing authority of any other state, or who possesses a certificate issued by the Institute of Internal Auditors, continuing education obtained for purposes of renewal of the license or certificate may be applied to satisfy the requirements of this section.

SEC. 3. Section 26946 of the Government Code is amended to read:

26946. The provisions of this article shall become effective in only those counties in which, prior to the first day of the period for filing declarations of candidacy for the office of county auditor, the board

of supervisors by a unanimous vote, at a regular meeting with all members present, enacts an ordinance adopting the provisions of this article. The ordinance so adopted may be repealed by the board of supervisors at any time.

CHAPTER 382

An act to amend Section 2530.2 of the Business and Professions Code, relating to speech-language pathology and audiology.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 2530.2 of the Business and Professions Code is amended to read:

2530.2. As used in this chapter, unless the context otherwise requires:

(a) "Committee" means the Speech-Language Pathology and Audiology Examining Committee.

(b) "Person" means any individual, organization or corporate body except that only individuals can be licensed under this chapter.

(c) A "speech-language pathologist" is a person who practices speech-language pathology.

(d) "The practice of speech-language pathology" means the application of principles, methods, and procedures for measurement, testing, identification, prediction, counseling, or instruction related to the development and disorders of speech, voice, or language for the purpose of identifying, preventing, managing, habilitating or rehabilitating, ameliorating, or modifying those disorders and conditions in individuals or groups of individuals; conducting hearing screenings; and the planning, directing, conducting and supervision of programs for identification, evaluation, habilitation, and rehabilitation of disorders of speech, voice, or language.

(e) "Speech-language pathology aide" means any person meeting the minimum requirements established by the committee, who works directly under the supervision of a speech-language pathologist.

(f) An "audiologist" is one who practices audiology.

(g) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, instruction related to auditory, vestibular, and related functions and the modification of communicative disorders involving speech, language, auditory behavior or other aberrant behavior resulting from auditory dysfunction; and the planning, directing, conducting, supervising, or

participating in programs of identification of auditory disorders, hearing conservation, cerumen removal, aural habilitation, and rehabilitation, including, hearing aid recommendation and evaluation procedures including, but not limited to, specifying amplification requirements and evaluation of the results thereof, auditory training, and speech reading.

(h) "Audiology aide" means any person, meeting the minimum requirements established by the committee, who works directly under the supervision of an audiologist.

(i) "Board" means the Medical Board of California or a division of the board.

(j) "Cerumen removal" means the nonroutine removal of cerumen within the cartilaginous ear canal necessary for access in performance of audiological procedures that shall occur under physician and surgeon supervision. Cerumen removal, as provided by this section, shall only be performed by a licensed audiologist. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but shall include all of the following:

(1) Collaboration on the development of written standardized protocols. The protocols shall include a requirement that the supervised audiologist immediately refer to an appropriate physician any trauma, including skin tears, bleeding, or other pathology of the ear discovered in the process of cerumen removal as defined in this subdivision.

(2) Approval by the supervising physician of the written standardized protocol.

(3) The supervising physician shall be within the general vicinity, as provided by the physician-audiologist protocol, of the supervised audiologist and available by telephone contact at the time of cerumen removal.

(4) A licensed physician and surgeon may not at any one time supervise more than two audiologists for purposes of cerumen removal.

(k) A "hearing screening" performed by a speech-language pathologist means a binary puretone screening at a preset intensity level for the purpose of determining if the screened individuals are in need of further medical or audiological evaluation.

CHAPTER 383

An act to add Section 24045.15 to the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 24045.15 is added to the Business and Professions Code, to read:

24045.15. (a) Notwithstanding any other provision of this division, the department may issue a special temporary on-sale or off-sale wine license to any nonprofit corporation having an agricultural purpose that is exempt from the payment of income taxes under Section 501(c)(5) of the Internal Revenue Code of 1986. If the nonprofit corporation's name, or any name under which the nonprofit corporation does business, includes the designation of an American viticultural area (AVA) recognized by the United States Bureau of Alcohol, Tobacco and Firearms (BATF), as set forth in Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations (27 C.F.R. 9.1 et seq.), the membership of the nonprofit corporation shall include a majority of the winegrowers located in the named AVA in order to obtain a license under this section. No more than one nonprofit corporation located in an AVA is entitled to obtain a license under this section. The applicant shall accompany the application with a fee of one hundred dollars ($100).

(b) This special license shall only entitle the licensee to sell wine donated or sold to the nonprofit corporation by the member winegrowers to consumers for the purpose of fundraising. Off-sale privileges shall be limited to direct mail, telephone, and on-line computer. No member winegrower shall donate or sell more than 75 cases of wine per year to the nonprofit corporation and the nonprofit corporation shall sell no more than 1,000 cases of wine per year under the license. If the nonprofit corporation's name or any name under which the nonprofit corporation does business includes the designation of an American viticultural area (AVA) recognized by the United States Bureau of Alcohol, Tobacco and Firearms (BATF), as set forth in Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations (27 C.F.R. 9.1 et seq.), the wines sold by the nonprofit corporation must be entitled to use the named AVA as the appellation of origin. The wine shall not be sold at less than its minimum retail price.

(c) This special license shall be for a period not exceeding 60 days. Only one special license authorized by this section shall be issued to any nonprofit corporation in any 12-month period.

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

In order to authorize the issuance of a special temporary on-sale or off-sale wine license for the purposes of a fundraising event to be held in the near future, it is necessary that this act take effect immediately.

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CHAPTER 384

An act to amend Section 106985 of the Health and Safety Code, relating to radiologic technology.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 106985 of the Health and Safety Code is amended to read:

106985. (a) Notwithstanding Section 2052 of the Business and Professions Code or any other provision of law, a radiologic technologist certified pursuant to the Radiologic Technology Act (Section 27) may, under the general supervision of a licensed physician and surgeon, perform venipuncture in an upper extremity to administer contrast materials, manually or by utilizing a mechanical injector, if the radiologic technologist has been issued a certificate, as described in subdivision (b).

(b) A radiologic technologist may perform venipuncture, as described in (a), only if the radiologic technologist has received sufficient training and education, as specified in subdivision (d). The radiologic technologist shall be issued a certificate by an approved school of radiologic technology or instructor indicating satisfactory completion of the training required.

(c) "General supervision," for purposes of this section, means the direction of procedures authorized by this section by a licensed physician and surgeon who shall be physically present within the facility and available within the facility where the procedures are performed, in order to provide immediate medical intervention to prevent or mitigate injury to the patient in the event of adverse reaction.

(d) Training and education is deemed sufficient if the radiologic technologist has complied with both of the following:

(1) Received a total of ten hours of instruction, including all of the following:

(A) Anatomy and physiology of venipuncture sites.

(B) Venipuncture instruments, intravenous solutions, and related equipment.

(C) Puncture techniques.

(D) Techniques of intravenous line establishment.

(E) Hazards and complications of venipuncture.

(F) Post-puncture care.

(G) Composition and purpose of antianaphylaxis tray.

(H) First aid and basic cardiopulmonary resuscitation.

(2) Performed ten venipunctures under supervision.

(e) Schools for radiologic technologists shall include the instruction specified in subdivision (d).

(f) Nothing in this section shall be construed to authorize a radiologic technologist to perform arterial puncture.

CHAPTER 385

An act to amend Sections 678.1 and 11664 of the Insurance Code, relating to insurance.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 678.1 of the Insurance Code is amended to read:

678.1. (a) This section applies only to policies of insurance of commercial insurance that are subject to Sections 675.5 and 676.6.

(b) A notice of nonrenewal shall be in writing and shall be delivered or mailed to the producer of record and to the named insured at the mailing address shown on the policy. Subdivision (a) of Section 1013 of the Code of Civil Procedure shall be applicable if the notice is mailed.

(c) An insurer, at least 60 days, but not more than 120 days, in advance of the end of the policy period, shall give notice of nonrenewal, and the reasons for the nonrenewal, if the insurer intends not to renew the policy, or to condition renewal upon reduction of limits, elimination of coverages, increase in deductibles, or increase of more than 25 percent in the rate upon which the premium is based.

(d) If an insurer fails to give timely notice required by subdivision (c), the policy of insurance shall be continued, with no change in its terms or conditions, for a period of 60 days after the insurer gives the notice.

(e) With respect to policies defined in subdivision (b) of Section 676.6, in addition to the bases for conditional renewal set forth in subdivision (c), an insurer may also condition renewal upon requirements relating to the underlying policy or policies. If the requirements are not satisfied as of (1) the expiration date of the policy, or (2) 30 days after mailing or delivery of such notice, whichever is later, the conditional renewal notice shall be treated as an effective notice of nonrenewal, providing the insurer has sent written confirmation to the first named insured and the producer of record that the conditions were not met and that coverage ceased at the expiration date shown in the expiring policy.

(f) A notice of nonrenewal shall not be required in any of the following situations:

(1) The transfer of, or renewal of, a policy without a change in its terms or conditions or the rate on which the premium is based between insurers that are members of the same insurance group.

(2) The policy has been extended for 90 days or less, if the notice required in subdivision (c) has been given prior to the extension.

(3) The named insured has obtained replacement coverage or has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.

(4) The policy is for a period of no more than 60 days and the insured is notified at the time of issuance that it may not be renewed.

(5) The named insured requests a change in the terms or conditions or risks covered by the policy within 60 days prior to the end of the policy period.

(6) The insurer has made a written offer to the insured, within the time period specified in subdivision (c), to renew the policy under changed terms or conditions or at a changed premium rate. As used herein, "terms or conditions" includes, but is not limited to, a reduction in limits, elimination of coverages, or an increase in deductibles.

(g) After an insured has received a notice of nonrenewal, upon receiving a written request from the insured or the agent or broker of record on the nonrenewed policy, an insurer shall provide a premium and loss history report for the account's tenure or the past three years, whichever is shorter, plus loss experience during the current policy year, within 15 business days of receiving the request. This subdivision does not apply to professional liability insurance.

SEC. 2. Section 11664 of the Insurance Code is amended to read:

11664. (a) This section applies only to policies of workers' compensation insurance.

(b) A notice of nonrenewal shall be in writing and shall be delivered or mailed to the producer of record and to the named insured at the mailing address shown on the policy. Subdivision (a) of Section 1013 of the Code of Civil Procedure shall be applicable if the notice is mailed.

(c) An insurer, at least 30 days, but not more than 120 days, in advance of the end of the policy period, shall give notice of nonrenewal, and the reasons for the nonrenewal, if the insurer intends not to renew the policy.

(d) If an insurer fails to give timely notice required by subdivision (c), the policy of insurance shall be continued, with no change in its premium rate, for a period of 60 days after the insurer gives the notice.

(e) A notice of nonrenewal shall not be required in any of the following situations:

(1) The transfer of, or renewal of, a policy without a change in its terms or conditions or the rate on which the premium is based between insurers that are members of the same insurance group.

(2) The policy has been extended for 90 days or less, if the notice required in subdivision (c) has been given prior to the extension.

(3) The named insured has obtained replacement coverage or has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.

(4) The policy is for a period of no more than 60 days and the insured is notified at the time of issuance that it may not be renewed.

(5) The named insured requests a change in the terms or conditions or risks covered by the policy within 60 days prior to the end of the policy period.

(6) The insurer has made a written offer to the insured to renew the policy at a premium rate increase of less than 25 percent.

(f) After an insured has received a notice of nonrenewal, upon receiving a written request from the insured or the agent or broker of record on the nonrenewed policy, an insurer shall provide a premium and loss history report for the account's tenure or the past three years, whichever is shorter, plus loss experience during the current policy year, within 10 business days of receiving the request.

CHAPTER 386

An act to amend Sections 24001, 24007, and 24101 of, and to add Sections 24001.5 and 24101.5 to, the Education Code, and to amend Section 21540.5 of the Government Code, relating to public employees.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 24001 of the Education Code is amended to read:

24001. (a) A member may apply for a disability allowance under this plan if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual service performed subject to coverage by the plan. Credit received because of workers' compensation payments shall be counted toward the four-year requirement in accordance with Section 22710.

(2) The last five years of credited service have been served in this state.

(3) At least one year was credited for service performed subsequent to the date on which the member terminated the service retirement allowance under Section 24208.

(4) At least one year was credited for service performed subsequent to the most recent refund of accumulated retirement contributions.

(5) The member has not attained normal retirement age, or has unused sick leave with sufficient days to have the member receive salary on account of sick leave to normal retirement age.

(6) The member is not applying for a disability allowance because of a physical or mental condition known to exist at the time the most recent membership in the plan commenced and that remains substantially unchanged at the time of application.

(b) Nothing in subdivision (a) shall affect the right of a member to a disability allowance if the reason that the member has performed less than four years of actual service is due to an on-the-job injury or a disease while in employment subject to coverage by the plan and the four-year requirement can be satisfied by credit obtained under Chapter 14 (commencing with Section 22800) in addition to any credit received from workers' compensation payments.

(c) Nothing in subdivision (a) shall affect the right of a member who has less than five years of credited service to a disability allowance providing the member has at least one year of credited California service and if the reason for the disability is due to an unlawful act of bodily harm committed by another human being on the person of the member while the member was performing his or her official duties in a position subject to coverage by the plan.

SEC. 1.5. Section 24001.5 is added to the Education Code, to read:

24001.5. A member shall not be eligible for disability under this plan while on a leave of absence to serve as a full-time elected officer of an employee organization, even if receiving service credit under Section 22711.

SEC. 2. 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. This section shall not apply to a member who is eligible to apply for a disability allowance under subdivision (c) of Section 24001.

SEC. 3. Section 24101 of the Education Code is amended to read:

24101. (a) A member may apply for a disability retirement if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual service performed subject to coverage by the plan. Credit received because of workers' compensation payments shall be counted toward the four-year requirement in accordance with Section 22710.

(2) The last five years of credited service have been served in this state.

(3) At least one year (1.000) of credited service was earned subsequent to the date on which the member terminated the service retirement allowance under Section 24208.

(4) At least one year (1.000) of credited service was earned subsequent to the date on which the member's disability allowance was terminated.

(5) At least one year (1.000) of credited service was earned subsequent to the most recent refund of accumulated retirement contributions.

(6) The member is not applying for a disability retirement because of a physical or mental condition known to exist at the time the most recent membership in the plan commenced and that remains substantially unchanged at the time of application.

(b) Nothing in subdivision (a) shall affect the right of a member to a disability retirement if the reason that the member has performed less than four years of actual service is due to an on-the-job injury or a disease while in employment subject to coverage by the plan and the four-year requirement can be satisfied by credit obtained under Chapter 14 (commencing with Section 22800) in addition to any credit received from workers' compensation payments.

(c) Nothing in subdivision (a) shall affect the right of a member who has less than five years of credited service to a disability retirement allowance providing the member has at least one year of credited California service and if the reason for the disability is due to an unlawful act of bodily harm committed by another human being on the person of the member while the member was performing his or her official duties in a position subject to coverage by the plan.

SEC. 3.5. Section 24101.5 is added to the Education Code, to read:

24101.5. A member shall not be eligible for disability retirement from this plan while on a leave of absence to serve as a full-time elected officer of an employee organization, even if receiving service credit under Section 22711.

SEC. 4. Section 21540.5 of the Government Code is amended to read:

21540.5. The special death benefit is also payable if the deceased was a state, school, or local miscellaneous member if the death of the member was a direct consequence of a violent act perpetrated on his or her person that arose out of and was in the course of his or her official duties and there is a survivor who qualifies under subdivision (b) of Section 21541. The Workers' Compensation Appeals Board, using the same procedure as in workers' compensation hearings,

shall, in disputed cases determine whether the member's death was a direct consequence of a violent act perpetrated on his or her person that arose out of and in the course of his or her official duties.

A natural parent of surviving children eligible to receive an allowance payable under this section shall not be required to become the guardian of surviving unmarried children under 18 years of age in order to be paid the benefits prescribed for those children.

The jurisdiction of the Workers' Compensation Appeals shall be limited solely to the issue of industrial causation, and this section shall not be construed to authorize the Workers' Compensation Appeals Board to award costs against this system pursuant to Section 4600 or 5811 or any other provision of the Labor Code.

This section shall not apply to a contracting agency nor its employees unless and until the agency elects to be subject to it by amendment to its contract made in the manner prescribed for approval of contracts, or in the case of a new contract, by express provision of the contract.

SEC. 5. The amendments to Section 21540.5 of the Government Code during the 1997–98 Regular Session shall not be construed to affect the liability of the Public Employees' Retirement System for any acts respecting state or local miscellaneous members that occurred prior to July 1, 1993, nor any acts respecting school members that occurred prior to January 1, 1998.

CHAPTER 387

An act to amend Sections 15052 and 16956 of, and to repeal and add Section 16955.5 of, the Corporations Code, relating to limited liability partnerships.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 15052 of the Corporations Code is amended to read:

15052. (a) At the time of registration pursuant to Section 15049, in the case of a registered limited liability partnership, and Section 15055, in the case of a foreign limited liability partnership, and at all times during which those partnerships shall transact intrastate business, every registered limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims against it as follows:

(1) For claims based upon acts, errors, or omissions arising out of the practice of public accountancy, a registered limited liability partnership or foreign limited liability partnership providing

accountancy services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000). The partnership remains in

compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of the accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirement of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing accountancy services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars ($10,000,000).

(2) For claims based upon acts, errors, or omissions arising out of the practice of law, a registered limited liability partnership or foreign limited liability partnership providing legal services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf

of the partnership; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph,

provided that the amount of the accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied the requirements of subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing legal services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with the provisions of subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding fifteen million dollars ($15,000,000).

(b) For purposes of satisfying the security requirements of this section, a registered limited liability partnership or foreign limited liability partnership may aggregate the security provided by it pursuant to subparagraphs (A), (B), (C), and (D) of paragraph (1) of subdivision (a) or subparagraphs (A), (B), (C), and (D) of paragraph (2) of subdivision (a), as the case may be. Any registered limited liability partnership or foreign limited liability partnership intending to comply with the alternative security provisions set forth in subparagraph (D) of paragraph (1) of subdivision (a) or subparagraph (D) of paragraph (2) of subdivision (a) shall furnish the following information to the Secretary of State's office, in the manner prescribed in, and accompanied by all information required by, the applicable section:

TRANSMITTAL FORM FOR EVIDENCING COMPLIANCE WITH SECTION 15052(a)(1)(D) OR SECTION 15052(a)(2)(D) OF THE CALIFORNIA CORPORATIONS CODE

The undersigned hereby confirms the following:

1. _____
Name of registered or foreign limited liability partnership

2. _____
Jurisdiction where partnership is organized

3. _____
Address of principal office

4. The registered or foreign limited liability partnership chooses to satisfy therequirements of Section 15052 by confirming, pursuant to Sections 15052(a)(1)(D) or 15052(a)(2)(D) and pursuant to Section 15052(c), that, as of the most recently completed fiscal year, the partnership had a net worth equal to or exceeding ten million dollars ($10,000,000), in the case of a partnership providing accountancy services, or fifteen million dollars ($15,000,000), in the case of a partnership providing legal services.

5. _____
Title of authorized person executing this form

6. _____
Signature of authorized person executing this form

(c) Pursuant to subparagraph (D) of paragraph (1) of subdivision (a) or subparagraph (D) of paragraph (2) of subdivision (a), a registered limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding the amount required. In order to comply with this alternative method of meeting the requirements established in this section, a registered limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the Secretary of State's office, signed by an authorized member of the registered limited liability partnership or foreign limited liability partnership, accompanied by a transmittal form as prescribed by subdivision (b). In order to be current in a

given year, the partnership form for confirming compliance with the optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(d) Neither the existence of the requirements of subdivision (a) nor the extent of the registered limited liability partnership's or foreign limited liability partnership's compliance with the alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a registered limited liability partnership or foreign limited liability partnership is otherwise in compliance with the terms of this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the registered limited liability partnership or foreign limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A registered limited liability partnership that has been the subject of a proceeding and that conducts business after the proceeding ends shall thereafter comply with paragraph (1) or (2) of subdivision (a), in order to obtain the limitations on liability afforded by subdivision (b) of Section 15015.

SEC. 2. Section 16955.5 of the Corporations Code is repealed.

SEC. 3. Section 16955.5 is added to the Corporations Code, to read:

16955.5. (a) A partnership that registered as a registered limited liability partnership prior to January 1, 1997, or a partnership that converted to a registered limited liability partnership prior to that date shall continue to be governed by the law in effect prior to the adoption of this chapter unless it elects to be governed by this chapter in the manner provided in subdivision (c).

(b) A partnership that registers as a registered limited liability partnership or a partnership that converts to a registered limited liability partnership on or after January 1, 1997, shall be governed by this chapter but may elect to be governed by the law in effect prior to adoption of this chapter in the manner provided in subdivision (c).

(c) Any election made pursuant to subdivision (a) or (b) may be made from time to time and may be revoked, in each case by the vote of the partners possessing a majority of the interests of the partners in the current profits of the partnership or by a different vote as may be required in the partnership agreement.

(d) Any election made pursuant to subdivision (c) and any revocation of that election shall be set forth in the registration filed

by the registered limited liability partnership with the Secretary of State, in an amendment to the registration filed with the Secretary of State, or in an attachment to the registration or amendment. Any such election shall terminate and be of no further force or effect on or after January 1, 1999. After that date the registered limited liability partnership shall be governed by the law as specified in subdivisions (a) and (b) of Section 16111.

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

SEC. 4. Section 16956 of the Corporations Code is amended to read:

16956. (a) At the time of registration pursuant to Section 16953, in the case of a registered limited liability partnership, and Section 16959, in the case of a foreign limited liability partnership, and at all times during which those partnerships shall transact intrastate business, every registered limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims against it as follows:

(1) For claims based upon acts, errors, or omissions arising out of the practice of public accountancy, a registered limited liability partnership or foreign limited liability partnership providing accountancy services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to

those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing accountancy services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall

affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars ($10,000,000).

(2) For claims based upon acts, errors, or omissions arising out of the practice of law, a registered limited liability partnership or foreign limited liability partnership providing legal services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies

then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirement of this subparagraph.

(C) Unless the partnership has satisfied the requirements of subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing legal services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with the provisions of subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or

dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding fifteen million dollars ($15,000,000).

(b) For purposes of satisfying the security requirements of this section, a registered limited liability partnership or foreign limited liability partnership may aggregate the security provided by it pursuant to subparagraphs (A), (B), (C), and (D) of paragraph (1) of subdivision (a) or subparagraphs (A), (B), (C), and (D) of paragraph (2) of subdivision (a), as the case may be. Any registered limited liability partnership or foreign limited liability partnership intending to comply with the alternative security provisions set forth in subparagraph (D) of paragraph (1) of subdivision (a) or subparagraph (D) of paragraph (2) of subdivision (a) shall furnish the following information to the Secretary of State's office, in the manner prescribed in, and accompanied by all information required by, the applicable section:

TRANSMITTAL FORM FOR EVIDENCING COMPLIANCE
WITH SECTION 16956(a)(1)(D) OR SECTION 16956(a)(2)(D)
OF THE CALIFORNIA CORPORATIONS CODE

The undersigned hereby confirms the following:

1. _____
Name of registered or foreign limited liability partnership

2. _____
Jurisdiction where partnership is organized

3. _____
Address of principal office

4. The registered or foreign limited liability partnershipchooses to satisfy the requirements of Section 16956 by confirming, pursuant to Sections 16956(a)(1)(D) or 16956(a)(2)(D) and pursuant to Section 16956(c), that, as of the most recently completed fiscal year, the partnership had a net worth equal to or exceeding ten million dollars ($10,000,000), in the case of a partnership providing accountancy services, or fifteen million dollars ($15,000,000) in the case of a partnership providing legal services.

5. _____
Title of authorized person executing this form

6. _____
Signature of authorized person executing this form

(c) Pursuant to subparagraph (D) of paragraph (1) of subdivision (a) or subparagraph (D) of paragraph (2) of subdivision (a), a registered limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding the amount required. In order to comply with this alternative method of meeting the requirements established in this section, a registered limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the Secretary of State's office, signed by an authorized member of the registered limited liability partnership or foreign limited liability partnership, accompanied by a transmittal form as prescribed by subdivision (b). In order to be current in a given year, the partnership form for confirming compliance with the optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(d) Neither the existence of the requirements of subdivision (a) nor the extent of the registered limited liability partnership's or foreign limited liability partnership's compliance with the alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in

determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a registered limited liability partnership or foreign limited liability partnership is otherwise in compliance with the terms of this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the registered limited liability partnership or foreign limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A registered limited liability partnership that has been the subject of a proceeding and that conducts business after the proceeding ends shall thereafter comply with paragraph (1) or (2) of subdivision (a), in order to obtain the limitations on liability afforded by subdivision (c) of Section 16306.

CHAPTER 388

An act to amend Section 123115 of the Health and Safety Code, relating to health.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

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

SECTION 1. Section 123115 of the Health and Safety Code is amended to read:

123115. (a) The representative of a minor shall not be entitled to inspect or obtain copies of the minor's patient records in either of the following circumstances:

(1) With respect to which the minor has a right of inspection under Section 123110.

(2) Where the health care provider determines that access to the patient records requested by the representative would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being. The decision of the health care provider as to whether or not a minor's records are available for inspection under this section shall not attach any liability to the provider, unless the decision is found to be in bad faith.

(b) When a health care provider determines there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient, the provider may decline to permit inspection or provide copies of the records to the patient, subject to the following conditions:

(1) The health care provider shall make a written record, to be included with the mental health records requested, noting the date of the request and explaining the health care provider's reason for refusing to permit inspection or provide copies of the records, including a description of the specific adverse or detrimental consequences to the patient that the provider anticipates would occur if inspection or copying were permitted.

(2) The health care provider shall permit inspection by, or provide copies of the mental health records to, a licensed physician and surgeon, licensed psychologist, licensed marriage, family, and child counselor, or licensed clinical social worker designated by request of the patient. The licensed physician and surgeon, licensed psychologist, licensed marriage, family, and child counselor, or licensed clinical social worker to whom the records are provided for inspection or copying shall not permit inspection or copying by the patient.

(3) The health care provider shall inform the patient of the provider's refusal to permit him or her to inspect or obtain copies of the requested records, and inform the patient of the right to require the provider to permit inspection by, or provide copies to, a licensed physician and surgeon, licensed psychologist, licensed marriage, family, and child counselor, or licensed clinical social worker designated by written authorization of the patient.

(4) The health care provider shall indicate in the mental health records of the patient whether the request was made under paragraph (2).

CHAPTER 389

An act to add Section 1367.62 to the Health and Safety Code, and to add Section 10123.87 to the Insurance Code, relating to health coverage, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 27, 1997.]

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

SECTION 1. The Legislature finds and declares both of the following:

(a) The length of a postdelivery hospital stay should be based on the unique characteristics of each mother and her newborn child, taking into consideration the health of the mother, the health and stability of the newborn, the ability and confidence of the mother and the father to care for their newborn, the adequacy of support systems

at home, and the access of the mother and her newborn to appropriate followup health care.

(b) The timing of the discharge of a mother and her newborn child from the hospital should be made by the treating physician in consultation with the mother.

SEC. 2. This act shall be known, and may be cited, as the "Newborns' and Mothers' Health Act of 1997."

SEC. 3. Section 1367.62 is added to the Health and Safety Code, to read:

1367.62. (a) No health care service plan contract that is issued, amended, renewed, or delivered on or after the effective date of the act adding this section, that provides maternity coverage, shall do any of the following:

(1) Restrict benefits for inpatient hospital care to a time period less than 48 hours following a normal vaginal delivery and less than 96 hours following a delivery by caesarean section. However, coverage for inpatient hospital care may be for a time period less than 48 or 96 hours if both of the following conditions are met:

(A) The decision to discharge the mother and newborn before the 48- or 96-hour time period is made by the treating physicians in consultation with the mother.

(B) The contract covers a postdischarge followup visit for the mother and newborn within 48 hours of discharge, when prescribed by the treating physician. The visit shall be provided by a licensed health care provider whose scope of practice includes postpartum care and newborn care. The visit shall include, at a minimum, parent education, assistance and training in breast or bottle feeding, and the performance of any necessary maternal or neonatal physical assessments. The treating physician shall disclose to the mother the availability of a postdischarge visit, including an in-home visit, physician office visit, or plan facility visit. The treating physician, in consultation with the mother, shall determine whether the postdischarge visit shall occur at home, the plan's facility, or the treating physician's office after assessment of certain factors. These factors shall include, but not be limited to, the transportation needs of the family, and environmental and social risks.

(2) Reduce or limit the reimbursement of the attending provider for providing care to an individual enrollee in accordance with the coverage requirements.

(3) Provide monetary or other incentives to an attending provider to induce the provider to provide care to an individual enrollee in a manner inconsistent with the coverage requirements.

(4) Deny a mother or her newborn eligibility, or continued eligibility, to enroll or to renew coverage solely to avoid the coverage requirements.

(5) Provide monetary payments or rebates to a mother to encourage her to accept less than the minimum coverage requirements.

(6) Restrict inpatient benefits for the second day of hospital care in a manner that is less than favorable to the mother or her newborn than those provided during the preceding portion of the hospital stay.

(7) Require the treating physician to obtain authorization from the health care service plan prior to prescribing any services covered by this section.

(b) (1) Every health care service plan contract, except as specified in paragraph (2), shall include notice of the coverage specified in subdivision (a) in the plan's evidence of coverage for evidences of coverage issued on or after January 1, 1998, and shall provide additional written notice of this coverage during the course of the enrollee's prenatal care. The contract may require the treating physician or the enrollee's medical group to provide this additional written notice of coverage during the course of the enrollee's prenatal care.

(2) Health care service plans that negotiate and enter into a contract with professional providers to provide services at alternative rates of payment of the type described in Section 10133 of the Insurance Code shall notify subscribers of the coverage under subdivision (a) within 60 days of the effective date of this act. The plan shall provide additional written notice of the coverage specified in subdivision (a) during the course of prenatal care if both of the following conditions are met:

(A) The plan previously notified subscribers that hospital stays for delivery would be inconsistent with the requirement in subparagraph (A) of paragraph (1) of subdivision (a).

(B) The plan received notice, whether by receipt of a claim, a request for preauthorization for pregnancy-related services, or other actual notice that the enrollee is pregnant.

(c) Nothing in this section shall be construed to prohibit a plan from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

SEC. 4. Section 10123.87 is added to the Insurance Code, to read:

10123.87. (a) No individual or group policy of disability insurance that provides coverage for hospital, medical, and surgical benefits that is issued, amended, renewed, or delivered on or after the effective date of the act adding this section, that provides maternity coverage, shall do any of the following:

(1) Restrict benefits for inpatient hospital care to a time period less than 48 hours following a normal vaginal delivery and less than 96 hours following a delivery by caesarean section. However, coverage for inpatient hospital care may be for a time period less than 48 or 96 hours if both of the following conditions are met:

(A) The decision to discharge the mother and newborn before the 48- or 96-hour time period is made by the treating physicians in consultation with the mother.

(B) The policy covers a postdischarge followup visit for the mother and newborn within 48 hours of discharge, when prescribed

by the treating physician. The visit shall be provided by a licensed health care provider whose scope of practice includes postpartum care and newborn care. The visit shall include, at a minimum, parent education, assistance and training in breast or bottle feeding, and the performance of any necessary maternal or neonatal physical assessments. The treating physician shall disclose to the mother the availability of a postdischarge visit, including an in-home visit, physician office visit, or a visit to a facility under contract with the insurer. The treating physician, in consultation with the mother, shall determine whether the postdischarge visit shall occur at home, the contracted facility, or the treating physician's office after assessment of certain factors. These factors shall include, but not be limited to, the transportation needs of the family, and environmental and social risks.

(2) Reduce or limit the reimbursement of the attending provider for providing care to an individual insured in accordance with the coverage requirements.

(3) Provide monetary or other incentives to an attending provider to induce the provider to provide care to an individual insured in a manner inconsistent with the coverage requirements.

(4) Deny a mother or her newborn eligibility, or continued eligibility, to enroll or to renew coverage solely to avoid the coverage requirements.

(5) Provide monetary payments or rebates to a mother to encourage her to accept less than the minimum coverage requirements.

(6) Restrict inpatient benefits for the second day of hospital care in a manner that is less than favorable to the mother or her newborn than those provided during the preceding portion of the hospital stay.

(7) Require the treating physician to obtain authorization from the insurer prior to prescribing any services covered by this section.

(b) (1) Every individual or group policy of disability insurance that provides coverage for hospital, medical, and surgical benefits shall include notice of the coverage specified in subdivision (a) in the insurer's evidence of coverage or certificate of insurance for evidences of coverage or certificates of insurance issued on or after January 1, 1998.

(2) Every insurer that issues a policy of disability insurance under paragraph (1) shall notify policyholders of the coverage under subdivision (a) within 60 days of the effective date of this act. The insurer shall provide additional written notice of the coverage specified in subdivision (a) during the course of prenatal care if both of the following conditions are met:

(A) The insurer previously notified policyholders that hospital stays for delivery would be inconsistent with the requirement in subparagraph (A) of paragraph (1) of subdivision (a).

(B) The insurer received notice, whether by receipt of a claim, a request for preauthorization for pregnancy-related services, or other actual notice that the insured is pregnant.

(c) Nothing in this section shall be construed to prohibit an insurer from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the health of mothers and their newborns at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 390

An act to amend Sections 17280, 17295, 81130, and 81133 of the Education Code, and to amend Section 20111.5 of the Public Contract Code, relating to education facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 27, 1997.]

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

SECTION 1. Section 17280 of the Education Code is amended to read:

17280. (a) The Department of General Services under the police power of the state shall supervise the design and construction of any school building or the reconstruction or alteration of or addition to any school building, if not exempted under Section 17295, to ensure that plans and specifications comply with the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, and to ensure that the

work of construction has been performed in accordance with the approved plans and specifications, for the protection of life and property. Nothing in this section shall be construed to allow a school district to perform work with its own forces in excess of the limitations set forth in Sections 17595 and 17599. In calculating the cost of any project of reconstruction or alteration of, or addition to, any school building for the purpose of determining the applicability of the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, the Department of General Services shall not include, as an element of that cost, any expenses of air-conditioning equipment or insulation materials for that building, or of installing the equipment or materials.

(b) Whenever repairs due to fire damage, not including any damage caused by wind or earthquake, must be made to any school building previously approved by the Department of General Services, the approved plans and specifications used in the original work under then existing rules, regulations, and building standards may be used without modification, providing all other provisions of this article are carried out.

(c) Notwithstanding any other provision of law, no school district shall be authorized to construct or reconstruct any school building, regardless of the source of funding, unless and until the governing board of the district, by resolution, has indicated the agreement of the district that any school building construction or reconstruction that exceeds those construction costs and allowable area standards or any allowable building area computed for an attendance area pursuant to Section 17041 shall, in the event of the district's subsequent application for state funding for school facility construction, be deducted from the allowable building area for which the district would otherwise have been eligible, which restriction shall not be subject to waiver or exception as otherwise may be provided by law.

(d) If it is determined that, for any reason, a school district failed to comply with the requirement of this section, the district shall not be eligible for any additional building area pursuant to Section 17049 and may be denied any time priority established for the particular project pursuant to Section 17016.

SEC. 2. Section 17295 of the Education Code is amended to read:

17295. (a) The Department of General Services shall pass upon and approve or reject all plans for the construction or, if the estimated cost exceeds twenty-five thousand dollars ($25,000), the alteration of any school building. To enable it to do so, the governing board of each school district and any other school authority before adopting any plans for the school building shall submit the plans to the Department of General Services for approval, and shall pay the fees prescribed in this article.

(b) Notwithstanding subdivision (a) of Section 17295, where the estimated cost of the reconstruction or alteration of, or an addition

to, any school building exceeds twenty-five thousand dollars ($25,000) but does not exceed one hundred thousand dollars ($100,000), a licensed structural engineer shall examine the proposed project to determine if it is a nonstructural alteration or a structural alteration. If he or she determines that the project is a nonstructural alteration, he or she shall prepare a statement so indicating. If he or she determines that the project is structural, he or she shall prepare plans and specifications for the project which shall be submitted to the Department of General Services for review and approval. A copy of the engineer's report stating that the work does not affect structural elements shall be filed with the Department of General Services.

(c) If a licensed structural engineer submits a report to the Department of General Services stating that the plans or activities authorized pursuant to subdivision (b) do not involve structural elements, then all of the following shall apply to that project:

(1) The design professional in responsible charge of the project undertaken pursuant to this subdivision shall certify that the plans and specifications for the project meet any applicable fire and life safety standards, and do not affect the disabled access requirements of Section 4450 of the Government Code, and shall submit this certification to the department. The letter of certification shall bear the identifying licensing stamp or seal of the design professional. This provision does not preclude a design professional from submitting plans and specifications to the department along with the appropriate fee for review.

(2) Within 10 days of the completion of any project authorized pursuant to subdivision (b), the school construction inspector of record on the project, who is certified by the department to inspect school buildings, shall certify in writing to the department that the reconstruction, alteration, or addition has been completed in compliance with the plans and specifications.

(3) The dollar amounts cited in this section shall be increased on an annual basis, commencing January 1, 1999, by the department according to an inflationary index governing construction costs that is selected and recognized by the department.

(4) No school district shall subdivide a project for the purpose of evading the limitation on amounts cited in this

(d) For purposes of this section, "design professional in responsible charge" or "design professional" means the licensed architect, licensed structural engineer, or licensed civil engineer who is responsible for the completion of the design work involved with the project.

SEC. 3. Section 81130 of the Education Code is amended to read:

81130. (a) The Department of General Services under the police power of the state shall supervise the design and construction of any school building or the reconstruction or alteration of, or addition to, any school building, if not exempted under Section 81133, to ensure

that plans and specifications comply with the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, and to ensure that the work of construction has been performed in accordance with the approved plans and specifications, for the protection of life and property. Nothing in this section shall be construed to allow a community college district to perform work with its own forces in excess of the limitations set forth in Article 41 (commencing with Section 20650) of Part 3 of Division 2 of the Public Contract Code.

(b) Whenever repairs due to fire damage must be made to any school building previously approved by the Department of General Services, the approved plans and specifications used in the original work under then existing rules, regulations, and building standards may be used without modification, providing all other provisions of this article are carried out.

SEC. 4. Section 81133 of the Education Code is amended to read:

81133. (a) The Department of General Services shall pass upon and approve or reject all plans for the construction or, if the estimated cost exceeds twenty-five thousand dollars ($25,000), the alteration of any school building. To enable it to do so, the governing board of each community college district and any other school authority before adopting any plans for the school building shall submit the plans to the Department of General Services for approval, and shall pay the fees prescribed in this article.

(b) Notwithstanding subdivision (a) , where the estimated cost of reconstruction or alteration of, or addition to, a school building exceeds twenty-five thousand dollars ($25,000), but does not exceed one hundred thousand dollars ($100,000), a licensed structural engineer shall examine the proposed project to determine if it is a nonstructural alteration or a structural alteration. If he or she determines that the project is a nonstructural alteration, he or she shall prepare a statement so indicating. If he or she determines that the project is structural, he or she shall prepare plans and specifications for the project which shall be submitted to the Department of General Services for review and approval. A copy of the engineer's report stating that the work does not affect structural elements shall be filed with the Department of General Services.

(c) If a licensed structural engineer submits a report to the Department of General Services stating that the plans or activities authorized pursuant to subdivision (b) do not involve structural elements, then all of the following shall apply to that project:

(1) The design professional in responsible charge of the project undertaken pursuant to this subdivision shall certify that the plans and specifications for the project meet any applicable fire and life safety standards, and do not affect the disabled access requirements of Section 4450 of the Government Code, and shall submit this certification to the department. The letter of certification shall bear the identifying licensing stamp or seal of the design professional. This

provision does not preclude a design professional from submitting plans and specifications to the department along with the appropriate fee for review.

(2) Within 10 days of the completion of any project authorized pursuant to subdivision (b), the school construction inspector of record on the project, who is certified by the department to inspect school buildings, shall certify in writing to the department that the reconstruction, alteration, or addition has been completed in compliance with the plans and specifications.

(3) The dollar amounts cited in this section shall be increased on an annual basis, commencing January 1, 1999, by the department according to an inflationary index governing construction costs that is selected and recognized by the department.

(4) No school district shall subdivide a project for the purpose of evading the limitation on amounts cited in this section.

(5) Before letting any contract for any construction or alteration of any school building, the written approval of the plans, as to safety of design and construction, by the Department of General Services, shall first be had and obtained.

(6) In each case the application for approval of the plans shall be accompanied by the plans and full, complete, and accurate specifications, and structural design computations, and estimates of cost, which shall comply in every respect with any and all requirements prescribed by the Department of General Services.

(7) The application shall be accompanied by a filing fee in amounts as determined by the Department of General Services based on the estimated cost according to the following schedule:

(A) For the first one million dollars ($1,000,000), a fee of not more than 0.7 percent of the estimated cost.

(B) For all costs in excess of one million dollars ($1,000,000), a fee of not more than 0.6 percent of the estimated cost.

The minimum fee in any case shall be two hundred fifty dollars ($250). If the actual cost exceeds the estimated cost by more than 5 percent, a further fee shall be paid to the Department of General Services, based on the above schedule and computed on the amount by which the actual cost exceeds the amount of the estimated cost.

(8) All fees shall be paid into the State Treasury and credited to the Division of Architecture Public Building Fund, which fund is continued in existence and is retitled the Architecture Public Building Fund, and are continuously appropriated, without regard to fiscal years, for the use of the Department of General Services, subject to approval of the Department of Finance, in carrying out the provisions of this article.

Adjustments in the amounts of the fees, as determined by the Department of General Services and approved by the Department of Finance, shall be made within the limits set in subdivision (j) in order to maintain a reasonable working balance in the fund.

(9) No contract for the construction or alteration of any school building, made or executed by the governing board of any community college district or other public board, body, or officer otherwise vested with authority to make or execute this contract, is valid, and no public money shall be paid for any work done under this contract or for any labor or materials furnished in constructing or altering the building, unless the plans, specifications, and estimates comply in every particular with the provisions of this article and the requirements prescribed by the Department of General Services and unless the approval thereof in writing has first been had and obtained from the Department of General Services.

(d) For purposes of this section, "design professional in responsible charge" or "design professional" means the licensed architect, licensed structural engineer, or licensed civil engineer who is responsible for the completion of the design work involved with the project.

SEC. 5. Section 20111.5 of the Public Contract Code is amended to read:

20111.5. (a) The governing board of the district may require that each prospective bidder for a contract, as described under Section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.

(b) Any school district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed qualified to bid.

(c) Each prospective bidder on any contract described under Section 20111 shall be furnished by the school district letting the contract with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be disregarded.

(d) A proposal form required pursuant to subdivision (c) shall not be accepted from any person or other entity who is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but has not done so at least five days prior to the date fixed for the public opening of sealed bids or has not been prequalified, pursuant to subdivision (b), for at least one day prior to that date.

(e) Notwithstanding subdivision (d), any school district may establish a process for prequalifying prospective bidders pursuant to

this section on a quarterly basis and may authorize that prequalification to be considered valid for up to one calendar year following the date of initial prequalification.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to help expedite, as soon as possible, the approval process for structural alteration school construction projects, it is necessary that this act take effect immediately.

CHAPTER 391

An act to amend Sections 25003, 25100, 25101, 25110, 25120, 25130, 25161, 25164, 25165, 25203, 25216, 25230, 25234, 25237, 25240, 25241, 25245, 25300, 25301, 25532, 25608, 25612.5, and 25619 of, to amend the heading of Chapter 1 (commencing with Section 25100) of Part 2 of, the heading of Part 2 (commencing with Section 25100), the heading of Chapter 3 (commencing with Section 25230) of Part 3 of, and the heading of Part 3 (commencing with Section 25200) of, Division 1 of Title 4 of, to add Sections 25009.5, 25100.1, 25101.1, 25102.1, 25230.1, and 25608.1 to, and to repeal and add Section 25202 of, the Corporations Code, relating to securities.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 27, 1997.]

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

SECTION 1. Section 25003 of the Corporations Code is amended to read:

25003. (a) "Agent" means any individual, other than a broker-dealer or a partner of a licensed broker-dealer, who represents a broker-dealer or who for compensation represents an issuer in effecting or attempting to effect purchases or sales of securities in this state.

(b) "Agent" does not include an individual who only represents an issuer in effecting transactions in securities exempted by subdivision (a), (b), (e), (f), (g), (j), (k) or (*l*) of Section 25100 or in effecting transactions exempted by Section 25102, and does not include an individual who has no place of business in this state if he or she effects transactions in this state exclusively with broker-dealers.

(c) "Agent" does not include an associated person of a broker or dealer effecting transactions described in Section 15(h)(3) of the Securities Exchange Act of 1934, subject to the provisions of Section 15(h)(2) of that act.

(d) An officer or director of a broker-dealer or issuer, or an individual occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition and receives compensation specifically related to purchases or sales of securities.

SEC. 2. Section 25009.5 is added to the Corporations Code, to read:

25009.5. (a) "Investment adviser representative" or "associated person of an investment adviser" means any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual, except clerical or ministerial personnel, who is employed by or associated with, or subject to the supervision and control of, an investment adviser that has obtained a certificate or that is required to obtain a certificate under this law, and who does any of the following:

(1) Makes any recommendations or otherwise renders advice regarding securities.

(2) Manages accounts or portfolios of clients.

(3) Determines which recommendation or advice regarding securities should be given.

(4) Solicits, offers, or negotiates for the sale or sells investment advisory services.

(5) Supervises employees who perform any of the foregoing.

(b) "Investment adviser representative" means, with respect to an investment adviser subject to Section 25230.1, a person defined as an investment adviser representative by Rule 203A-3 of the Securities and Exchange Commission (17 C.F.R. 275.203A-3) and who has a place of business in this state.

SEC. 3. The heading of Part 2 (commencing with Section 25100) of Division 1 of Title 4 of the Corporations Code is amended to read:

PART 2. QUALIFICATION OF AND FILING REQUIREMENTS FOR THE SALE OF SECURITIES

SEC. 4. The heading of Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title 4 of the Corporations Code is amended to read:

CHAPTER 1. EXEMPTIONS AND CERTAIN SECURITIES AND TRANSACTIONS NOT SUBJECT TO QUALIFICATION

SEC. 5. Section 25100 of the Corporations Code, as amended by Chapter 1064 of the Statutes of 1996, is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public

entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by the Dominion of Canada, any Canadian province, any political subdivision or municipality of that province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings association or federal savings bank or federal land bank or joint land bank or national farm loan association or by any savings association, as defined in subdivision (a) of Section 5102 of the Financial Code, which is subject to the supervision and regulation of the Commissioner of Financial Institutions of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property which are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to any investment contract sold or offered for sale with, or as part of, any such interest, or to any person engaged in the business of selling, distributing, or supplying water for irrigation purposes or domestic use which is not a public utility.

(g) Any mutual capital certificates or savings accounts, as defined in the Savings Association Law, issued by a savings association, as defined by subdivision (a) of Section 5102 of the Financial Code, and holding a license or certificate of authority then in force from the Commissioner of Financial Institutions of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company which is (1) subject to the jurisdiction of the Interstate Commerce Commission or (2) a holding company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or a subsidiary of that company within the meaning of that act or (3) regulated in respect of the issuance or

guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by that authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of that nonprofit organization or from remuneration received from that nonprofit organization.

(k) Any agreement, commonly known as a "life income contract," of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to that issuer and providing for the payment to the donor or persons designated by him or her of income or specified periodic payments from the donated property or other property for the life of the donor or those other persons.

(*l*) Any note, draft, bill of exchange, or banker's acceptance which is freely transferable and of prime quality, arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited, or any guarantee of that paper or of any such renewal, provided that the paper is not offered to the public in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange or banker's acceptances from qualification of those securities when the commissioner finds that the qualification is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus or similar benefit plan which meets the

requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees' pension, profit-sharing, stock bonus or similar plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange or designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or designated, or approved for listing or designation upon notice of issuance, in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange or system shall be made by the commissioner upon the written request of the exchange or system if the commissioner finds that the exchange or system: (i) in acting on applications for listing of common stock substantially applies the minimum standards set forth in either alternative (A) or (B) of paragraph (1), and (ii) in considering suspension or removal from listing or designation, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars ($750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange or system may also consider the listing or designation of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing or designation under this trading provision, the exchange or system shall review the nature and frequency of that

activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security which trades infrequently shall not be considered for listing or designation under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing or designation unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars ($3) per share for a reasonable period of time prior to the filing of a listing or designation application; provided, however, in certain instances an exchange or system may favorably consider listing an issue selling for less than three dollars ($3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars ($3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars ($3,000,000).

(B) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars ($15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company which (A) has shareholders' equity of less than one million dollars ($1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars ($3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars ($750,000).

(v) If shares of common stock sell at a price of less than three dollars ($3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of the shares within a reasonable period of time after being requested by the exchange to take that action.

A national securities exchange or interdealer quotation system of the National Association of Securities Dealers, Inc. certified by rule or order of the commissioner under this subdivision shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards or interdealer quotation system's designation criteria, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange or interdealer quotation system to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being met by the exchange or system in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or order, decertify any exchange or interdealer quotation system previously certified which ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange, or designated or approved for designation upon issuance as a national market system security on any interdealer quotation system, named in a rule or order of certification, and any warrant or right to purchase or subscribe to any such security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying the exchange or interdealer quotation system.

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, which qualifies under the provisions of Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against the members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, the commissioner may, in the commissioner's discretion, bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, a restraining order, or a writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of Section 1280.7, and (B) publish information concerning the violation of Section 1280.7.

(3) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise), required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after validly claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(6) The cost of any review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance

Code shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses including overhead reasonably incurred in the performance of the work.

The recoverable cost of each review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall not exceed twenty-five thousand dollars ($25,000), except that costs exceeding twenty-five thousand dollars ($25,000) shall be recoverable if the costs are necessary to prevent a violation of any provision of Section 1280.7 of the Insurance Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars ($300). This exemption does not apply to the shares or memberships of any such corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of any such corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans which meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Financial Institutions, and each of which loans at the time of transfer to the pool is an authorized investment for such originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) (1) Any security issued or guaranteed by and representing an interest in or a direct obligation of an industrial loan company incorporated under the laws of the state and authorized by the Commissioner of Financial Institutions to engage in industrial loan business.

(2) Any investment certificate in or issued by any industrial loan company that is organized under the laws of a state of the United States other than this state, that is insured by the Federal Deposit Insurance Corporation, and that maintains a branch office in this state.

SEC. 5.5. Section 25100 of the Corporations Code, as amended by Chapter 1064 of the Statutes of 1996, is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision or municipality of that province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings association or federal savings bank or federal land bank or joint land bank or national farm loan association or by any savings association, as defined in subdivision (a) of Section 5102 of the Financial Code, which is subject to the supervision and regulation of the Commissioner of Financial Institutions of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property which are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to: (1) any investment contract sold or offered for sale with, or as part of, that interest, or (2) any person engaged in the business of selling, distributing, or supplying water for irrigation purposes or domestic use that is not a public utility except that the exemption is applicable to any security of a mutual water company (other than an investment contract described in paragraph (1)) offered or sold in connection with subdivided lands pursuant to Chapter 2 (commencing with Section 14310) of Part 7 of Division 3 of Title 1.

(g) Any mutual capital certificates or savings accounts, as defined in the Savings Association Law, issued by a savings association, as defined by subdivision (a) of Section 5102 of the Financial Code, and holding a license or certificate of authority then in force from the Commissioner of Financial Institutions of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company which is (1) subject to the jurisdiction of the Interstate Commerce Commission or its successor or (2) a holding company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or a subsidiary of that company within the meaning of that act or (3) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by that authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to

make a profit directly or indirectly from any business or activity associated with the organization or operation of that nonprofit organization or from remuneration received from that nonprofit organization.

(k) Any agreement, commonly known as a "life income contract," of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to that issuer and providing for the payment to the donor or persons designated by him or her of income or specified periodic payments from the donated property or other property for the life of the donor or those other persons.

(*l*) Any note, draft, bill of exchange, or banker's acceptance which is freely transferable and of prime quality, arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited, or any guarantee of that paper or of that renewal, provided that the paper is not offered to the public in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange or banker's acceptances from qualification of those securities when the commissioner finds that the qualification is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus or similar benefit plan which meets the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees' pension, profit-sharing, stock bonus or similar benefit plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange or designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the

commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or designated, or approved for listing or designation upon notice of issuance, in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange or system shall be made by the commissioner upon the written request of the exchange or system if the commissioner finds that the exchange or system: (i) in acting on applications for listing of common stock substantially applies the minimum standards set forth in either alternative (A) or (B) of paragraph (1), and (ii) in considering suspension or removal from listing or designation, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars ($750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange or system may also consider the listing or designation of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing or designation under this trading provision, the exchange or system shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security which trades infrequently shall not be considered for listing or designation under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing or designation unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars ($3) per share for a reasonable period of time prior to the filing of a listing or designation application; provided, however, in certain instances an exchange or system may favorably consider listing an issue selling for less than three dollars ($3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue

has sold above three dollars ($3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars ($3,000,000).

(B) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars ($15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company which (A) has shareholders' equity of less than one million dollars ($1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars ($3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars ($750,000).

(v) If shares of common stock sell at a price of less than three dollars ($3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of the shares within a reasonable period of time after being requested by the exchange to take that action.

A national securities exchange or interdealer quotation system of the National Association of Securities Dealers, Inc. certified by rule or order of the commissioner under this subdivision shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards or interdealer quotation system's designation criteria, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange or interdealer quotation system to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being met by the exchange or system in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or order, decertify any exchange or interdealer quotation system previously certified which ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange, or designated or approved for designation upon issuance as a national market system security on any interdealer quotation system, named in a rule or order of certification, and any warrant or right to purchase or subscribe to that security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying the exchange or interdealer quotation system.

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, which qualifies under the provisions of Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against the members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, the commissioner may, in the commissioner's discretion, bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, a restraining order, or a writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of Section 1280.7, and (B) publish information concerning the violation of Section 1280.7.

(3) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise), required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after validly claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(6) The cost of any review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses including overhead reasonably incurred in the performance of the work.

The recoverable cost of each review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall not exceed twenty-five thousand dollars ($25,000), except that costs exceeding twenty-five thousand dollars ($25,000) shall be recoverable if the costs are necessary to prevent a violation of any provision of Section 1280.7 of the Insurance Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided

the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars ($300). This exemption does not apply to the shares or memberships of that corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of that corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans which meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Financial Institutions, and each of which at the time of transfer to the pool is an authorized investment for the originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) (1) Any security issued or guaranteed by and representing an interest in or a direct obligation of an industrial loan company incorporated under the laws of the state and authorized by the Commissioner of Financial Institutions to engage in industrial loan business.

(2) Any investment certificate in or issued by any industrial loan company that is organized under the laws of a state of the United States other than this state, that is insured by the Federal Deposit

Insurance Corporation, and that maintains a branch office in this state.

SEC. 6. Section 25100.1 is added to the Corporations Code, to read:

25100.1. The following securities are not subject to Sections 25110, 25120, and 25130:

(a) A security defined as a "covered security" pursuant to Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r).

(b) A security issued by an investment company that is registered or that has filed a registration statement under the Investment Company Act of 1940 (15 U.S.C. 80a-1) and that is defined as a "covered security" pursuant to Section 18(b)(2) of the Securities Act of 1933, and all the following requirements are met:

(1) Prior to any offer or sale in this state there is filed with or paid to the commissioner each of the following:

(A) A notice consisting of all documents that are part of a federal registration statement filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933 or, in lieu thereof, a form prescribed by the commissioner, and that a consent to service of process is either on file with the commissioner or is attached to the notice.

(B) As necessary to compute fees, a report of the value of securities covered under this subdivision that are offered or sold in this state.

(C) The notice filing fee provided for in subdivision (a) of Section 25608.1.

(2) If any offer or sale is to be made pursuant to Section 18(b)(2) of the Securities Act of 1933 and this subdivision more the 12 months after the date the notice was filed under this subdivision, the issuer shall file another notice and pay the fee specified in subparagraph (C) of paragraph (1).

SEC. 7. Section 25101 of the Corporations Code is amended to read:

25101. The following securities are exempt from the provisions of Section 25130:

(a) Any security issued by a person that is the issuer of any security listed on a national securities exchange, or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., if the exchange or system is certified by rule or order of the commissioner.

(b) The exemption provided by subdivision (a) does not apply to securities offered pursuant to a registration under the Securities Act of 1933 or pursuant to the exemption afforded by Regulation A under that act if the aggregate offering price of the securities offered pursuant to that exemption exceeds fifty thousand dollars ($50,000).

SEC. 8. Section 25101.1 is added to the Corporations Code, to read:

25101.1. The following securities are not subject to Sections 25110, 25120, and 25130:

(a) A security that is offered or sold in a transaction that is exempt from registration under Section 4(1) of the Securities Act of 1933 (15 U.S.C. 77r) pursuant to Section 18(b)(4)(A) of that act, if the issuer, other than a foreign (other country) issuer described in subdivision (b), of the security files the required reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, (15 U.S.C. 78a et seq.), and all the following requirements are met:

(1) A notice is filed by or on behalf of the issuer with the commissioner prior to an offer in this state, along with any documents filed with the Securities and Exchange Commission in any annual or periodic reports that the commissioner by rule or order deems appropriate.

(2) A consent to service of process under Section 25165 is filed with the notice required in paragraph (1).

(b) A security of a foreign (other country) issuer that avails itself of the exemption from registration under Section 12(g)(3) of the Securities Exchange Act of 1934 is subject to the qualification requirements of Sections 25110, 25120, and 25130, unless the issuer is a reporting company under the Securities Exchange Act of 1934 and files the required reports under Section 13 or 15(d) of that act.

SEC. 9. Section 25102.1 is added to the Corporations Code, to read:

25102.1. The following transactions are not subject to Sections 25110, 25120, and 25130:

(a) Any offer or sale of a security to a "qualified purchaser" as that term is defined by rule of the Securities and Exchange Commission pursuant to Section 18(b)(3) of the Securities Act of 1933 (15 U.S.C. 77r), and all the following requirements are met:

(1) A notice is filed with the commissioner prior to an offer in this state, along with any documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems appropriate.

(2) A consent to service of process under Section 25165 is filed with the notice required by paragraph (1).

(3) Payment of a notice filing fee provided for in subdivision (b) of Section 25608.1.

(b) Any offer and sale of a security with respect to a transaction that is exempt from registration under Sections 4(3) and 4(4) of the Securities Act of 1933 pursuant to Section 18(b)(4)(A) and (B) of that act.

(c) (1) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Section 18(b)(4)(C) of that act, and all the following requirements are met:

(A) A notice is filed with the commissioner prior to an offer in this state, along with any documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems appropriate.

(B) A consent to service of process under Section 25165 is filed with the notice required by paragraph (1).

(C) Payment of the notice filing fee provided for in subdivision (c) of Section 25608.1.

(2) The requirements of subparagraphs (A), (B), and (C) of paragraph (1) of this subdivision do not apply to securities offered and sold to the class of investors or in the transactions described in subdivisions (d), (g), (i), and (k) of Section 25102, or to the class of investors or in the transactions described in subdivisions (c), (d), (e), and (f) of Section 25104.

(d) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Section 18(b)(4)(D) of that act, and all the following requirements are met:

(1) A notice in the form of a copy of the completed Form D (17 C.F.R. 239.500) filed with the Securities and Exchange Commission is filed with the commissioner within 15 days of the first sale in this state, along with documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems appropriate.

(2) A consent to service of process under Section 25165 is filed with the notice as required by paragraph (1).

(3) Payment of the notice filing fee provided for in subdivision (d) of Section 25608.1.

(e) Notwithstanding the language of subdivisions (a), (b), (c), and (d) of this section, an issuer may file an application for qualification pursuant to Sections 25111, 25112, 25113, 25121, 25131, or 25142.

SEC. 10. Section 25110 of the Corporations Code is amended to read:

25110. It is unlawful for any person to offer or sell in this state any security in an issuer transaction (other than in a transaction subject to Section 25120), whether or not by or through underwriters, unless such sale has been qualified under Section 25111, 25112 or 25113 (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part. The offer or sale of such a security in a manner that varies or differs from, exceeds the scope of, or fails to conform with either a material term or material condition of qualification of the offering as set forth in the permit or qualification order, or a material representation as to the manner of offering which is set forth in the application for qualification, shall be an unqualified offer or sale.

SEC. 11. Section 25120 of the Corporations Code is amended to read:

25120. It is unlawful for any person to offer or sell in this state any security in an issuer transaction in connection with any change in the rights, preferences, privileges, or restrictions of or on outstanding securities or in any exchange of securities by the issuer with its existing security holders exclusively or in any exchange in connection with any merger or consolidation or purchase of assets in consideration wholly or in part of the issuance of securities, unless the security is qualified for sale under this chapter (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part.

SEC. 12. Section 25130 of the Corporations Code is amended to read:

25130. It is unlawful for any person to offer or sell any security in this state in any nonissuer transaction unless it is qualified for such sale under this chapter or under Section 25111 or 25113 of Chapter 2 (commencing with Section 25110) of this part (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part.

SEC. 13. Section 25161 of the Corporations Code is amended to read:

25161. Any document filed under this law or a predecessor statute may be incorporated by reference in a subsequent application or notice filing if it was filed within four years prior to the filing of the application or notice filing, or is otherwise available in the files of the commissioner, to the extent that the document is currently accurate.

SEC. 14. Section 25164 of the Corporations Code is amended to read:

25164. (a) Neither (1) the fact that an application for qualification under this law has been filed nor (2) the fact that such qualification has become effective constitutes a finding by the commissioner that any document filed under this law is true, complete, or not misleading. Neither any such fact nor the fact that a notice is filed or an exemption is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction (except as provided in Section 25142).

(b) It is unlawful to make or cause to be made to any prospective purchaser any representation inconsistent with subdivision (a) of this section.

(c) Every permit issued by the commissioner shall recite in bold type that the issuance thereof is permissive only and does not

constitute a recommendation or endorsement of the securities permitted to be issued.

SEC. 15. Section 25165 of the Corporations Code is amended to read:

25165. Every applicant for qualification of the sale of securities under this law or every person filing an application or a notice under Sections 25100.1, 25101.1, 25102.1, and 25230.1 or a request for or notice of an exemption from qualification (other than a California corporation or a person licensed as a broker-dealer in this state) shall file with the commissioner, in such form as prescribed by rule, an irrevocable consent appointing the commissioner or his or her successor in office to be the applicant's or person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the applicant or person or the successor, executor or administrator thereof, which arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous qualification under this law (or application for a permit under any prior law if the application under this law states that such consent is still effective), or in connection with a notice filing under Section 25100.1, 25101.1, 25102.1, and 25230.1, need not file another. Service may be made by leaving a copy of the process in the office of the commissioner but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

SEC. 16. The heading of Part 3 (commencing with Section 25200) of Division 1 of Title 4 of the Corporations Code is amended to read:

PART 3. REGULATION AND NOTICE FILING REQUIREMENTS OF AGENTS, BROKER-DEALERS, INVESTMENT ADVISER REPRESENTATIVES, AND INVESTMENT ADVISERS

SEC. 17. Section 25202 of the Corporations Code is repealed.

SEC. 18. Section 25202 is added to the Corporations Code, to read:

25202. (a) A person registered, licensed, or qualified (or exempt from registration, licensure, or qualification) as an investment adviser by another state, who has not previously had any certificate denied or revoked under this law or any predecessor statute, shall be exempted from the provisions of Section 25230 if (1) the investment adviser does not have a place of business in this state and (2) during

the preceding 12-month period has had fewer than six clients who are residents of this state.

(b) For the purpose of this section only, "client" has the same meaning as the term "client" is defined by the Securities and Exchange Commission under the rule adopted pursuant to Section 222(d) of the Investment Advisers Act of 1940, as amended. Also, for the purpose of this section only, "client" does not mean other investment advisers, broker-dealers, banks, savings and loan associations, trust companies, insurance companies, investment companies registered under the Investment Company Act of 1940, pension and profit-sharing trusts (other than self-employed individual retirement plans), or other institutional investors or governmental agencies or instrumentalities designated by rule or order of the commissioner.

SEC. 19. Section 25203 of the Corporations Code is amended to read:

25203. A person whose only clients are insurance companies shall be exempted from the provisions of Section 25230.

SEC. 20. Section 25216 of the Corporations Code is amended to read:

25216. (a) No broker-dealer or agent shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state by means of any manipulative, deceptive or other fraudulent scheme, device, or contrivance. The commissioner shall, for the purposes of this subdivision, by rule define such schemes, devices or contrivances as are manipulative, deceptive, or otherwise fraudulent.

(b) No broker-dealer or agent shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state in connection with which such broker-dealer or agent engages in any fraudulent, deceptive or manipulative act or practice or makes any fictitious quotation. The commissioner shall, for the purposes of this subdivision, by rule define and prescribe means reasonably designed to prevent such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

(c) No broker-dealer or agent shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state in contravention of such rules as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility of broker-dealers. Subject to the limitations of Section 15(h) of the Securities Exchange Act of 1934, those rules may require a minimum capital for broker-dealers or prescribe a ratio between net capital and aggregate indebtedness or both and a fidelity bond.

(d) No broker-dealer or agent shall effect or attempt to effect in this state, in contravention of such rules as the commissioner may

prescribe as necessary or appropriate in the public interest or for the protection of investors, (1) any transaction in connection with any security whereby any party to such transaction acquires any put, call, straddle, or other option or privilege (A) of buying or selling the security, (B) on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the market value thereof), (C) entered into on a national securities exchange relating to foreign currency, or (2) any transaction in connection with any security with relation to which the broker-dealer or agent has, directly or indirectly, any interest in any such put, call, straddle, option, or privilege, or (3) any transaction in any security for the account of any person who the broker-dealer or agent has reason to believe has, and who actually has, directly or indirectly, any interest in any such put, call, straddle, option, or privilege with relation to such security.

(e) The commissioner may by rule require any issuer who employs agents in connection with any security or transaction not exempted by Chapter 1 (commencing with Section 25100) of Part 2 of this division to post a surety bond in an amount not exceeding ten thousand dollars ($10,000), conditioned that the issuer will comply with the provisions of this law and the rules and orders issued thereunder. The bond, unless previously canceled, shall cover for the entire period that the qualification is in effect. If a deposit in lieu of a bond is made pursuant to Article 7 (commencing with Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure, the deposit may include an appropriate deposit of securities. No suit may be maintained to enforce any liability on the bond unless brought within two years after the contract of sale or other act upon which the suit is based.

SEC. 21. The heading of Chapter 3 (commencing with Section 25230) of Part 3 of Division 1 of Title 4 of the Corporations Code is amended to read:

CHAPTER 3. LICENSING AND NOTICE FILING REQUIREMENTS OF INVESTMENT ADVISER REPRESENTATIVES AND INVESTMENT ADVISERS

SEC. 22. Section 25230 of the Corporations Code is amended to read:

25230. (a) It is unlawful for any investment adviser to conduct business as an investment adviser in this state unless the investment adviser has first applied for and secured from the commissioner a certificate, then in effect, authorizing the investment adviser to do so or unless the investment adviser is exempted by the provisions of Chapter 1 (commencing with Section 25200) of this part or unless the investment adviser is subject to Section 25230.1.

(b) No person, on behalf of an investment adviser that has obtained a certificate pursuant to Section 25231, may, in this state: offer or negotiate for the sale of investment advisory services of the

investment adviser; determine which recommendations shall be made to, make recommendations to, or manage the accounts of, clients of the investment adviser; or determine the reports or analyses concerning securities to be published by the investment adviser, unless the investment adviser and that person have complied with rules that the commissioner may adopt for the qualification and employment of those persons.

SEC. 23. Section 25230.1 is added to the Corporations Code, to read:

25230.1. (a) A person that (1) is registered under Section 203 of the Investment Advisers Act of 1940 as an investment adviser or (2) is not registered under Section 203 of the Investment Advisers Act of 1940 because the person is excepted from the definition of an investment adviser under Section 202(a)(11) of that act, is not subject to the requirement of obtaining a certificate under Section 25230, but may not conduct business in this state unless the person has fewer than six clients as specified in Section 25202 or unless the person first complies with subdivision (b). An investment adviser representative that has a place of business in this state may be required to obtain a certificate pursuant to Section 25231.

(b) A person subject to subdivision (a) shall:

(1) File with the commissioner an annual notice, consisting of those documents filed with the Securities and Exchange Commission pursuant to the securities laws that the commissioner by rule or order deems appropriate or, in lieu thereof, a form prescribed by the commissioner, and a consent to service of process under Section 25240.

(2) Pay the notice filing fee provided for in subdivision (e) of Section 25608.1.

(c) No investment adviser representative, on behalf of an investment adviser subject to subdivision (a) may, in this state: offer or negotiate for the sale of investment advisory services of the investment adviser; determine which recommendations shall be made to, make recommendations to, or manage the accounts of, clients of the investment adviser; or determine the reports or analysis concerning securities to be published by the investment adviser, unless the investment adviser representative has complied with rules that the commissioner may adopt for the qualification and employment of investment adviser representatives.

(d) Subdivision (a) does not prohibit the commissioner from investigating and bringing enforcement actions with respect to fraud or deceit, including and without limitation, fraud or deceit under Section 25235 and the rules of the commissioner adopted thereunder, against an investment adviser or an investment adviser representative.

SEC. 24. Section 25234 of the Corporations Code is amended to read:

25234. (a) No investment adviser licensed under this chapter shall in this state enter into, extend or renew any investment advisory contract, or in any way perform any investment advisory contract entered into, extended or renewed on or after the effective date of this law, if that contract:

(1) Provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client, except as may be permitted by rule or order of the commissioner;

(2) Fails to provide, in substance, that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract;

(3) Fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(b) As used in this section, "investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than an investment company. Paragraph (1) of subdivision (a) of this section does not prohibit an investment advisory contract that provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date.

SEC. 25. Section 25237 of the Corporations Code is amended to read:

25237. The commissioner shall prescribe rules with respect to investment advisers licensed under this chapter who have custody of their clients' securities or funds or who have any power of attorney from their clients to execute transactions as he or she finds to be necessary or appropriate in the public interest or for the protection of investors. The rules may require a minimum capital for those investment advisers or prescribe a minimum ratio between net capital and aggregate indebtedness or both, and may require a fidelity bond.

SEC. 26. Section 25240 of the Corporations Code is amended to read:

25240. Every applicant for a certificate as a broker-dealer or an investment adviser (other than a California corporation), and every investment adviser subject to Section 25230.1, shall file with the commissioner, in such form as the commissioner by rule prescribes, an irrevocable consent appointing the commissioner or the commissioner's successor in office to be the person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the person or the person's successor, executor, or administrator, which arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A

person who has filed such a consent in connection with a previous application under this law (or under any prior law if the application states that such consent is still effective), or a person who has filed such a consent in connection with a previous notice filed under Section 25230.1, need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the person's last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

SEC. 27. Section 25241 of the Corporations Code is amended to read:

25241. Every broker-dealer and every investment adviser licensed under Section 25230 shall make and keep such accounts, correspondence, memoranda, papers, books, and other records and shall file such financial and other reports as the commissioner by rule requires, subject to the limitations of Section 15(h) of the Securities Exchange Act of 1934 with respect to broker-dealers and Section 222 of the Investment Advisers Act of 1940 with respect to investment advisers. All records so required shall be preserved for the time specified in the rule. All records referred to in this section are subject at any time and from time to time to such reasonable periodic, special, or other examinations by the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplications of examinations, the commissioner, insofar as he or she deems it practicable in administering this section, may cooperate with the securities administrators of other states, the Securities and Exchange Commission and any national securities exchange or national securities association.

Upon request of the commissioner, every broker-dealer or investment adviser licensed under Section 25230 shall furnish an authorization for disclosure to the commissioner of financial records of the licensee's broker-dealer or investment adviser business pursuant to Section 7473 of the Government Code.

SEC. 28. Section 25245 of the Corporations Code is amended to read:

25245. It is unlawful for any person willfully to make any untrue statement of a material fact in any application, notice, or report filed with the commissioner under this part, or willfully to omit to state in any such application, notice, or report any material fact which is required to be stated therein.

SEC. 29. Section 25300 of the Corporations Code is amended to read:

25300. (a) No person shall publish any advertisement in this state concerning any security sold or offered for sale in this state unless a true copy of the advertisement has first been filed in the office of the commissioner at least three business days prior to the publication or such shorter period as the commissioner may by rule or order allow.

(b) Subdivision (a) of this section does not apply to:

(1) Any advertisement for any security published by a licensed broker-dealer if he or she is not effecting transactions in such security as an underwriter or other participant in a distribution for the issuer;

(2) Any advertisement for any security published by an issuer or any underwriter or other participant in a distribution for the issuer if the security or transaction is exempted by the provisions of Chapter 1 (commencing with Section 25100) of Part 2 of this division;

(3) Any advertisement for any security in a nonissuer transaction if the security is exempted by Section 25100 or an offer of the security is exempted by subdivision (g) of Section 25104;

(4) Any advertisement permitted or required by Section 5(b)(2) or Section 2(10)(b) of the Securities Act of 1933 with respect to a security which has been registered under the Securities Act of 1933 and qualified for sale in this state;

(5) Any advertisement with respect to (A) a security that is subject to Sections 25100.1 and 25101.1 and the advertisement is permitted or required under the Securities Act of 1933, (B) a transaction that is subject to Section 25102.1 and the advertisement is permitted or required under the Securities Act of 1933, or (C) an investment adviser that is subject to Section 25230.1 and the advertisement is permitted or required under the Investment Adviser Act of 1940; or

(6) Any other advertisement exempted by rule of the commissioner.

SEC. 30. Section 25301 of the Corporations Code is amended to read:

25301. All advertisements published by any broker-dealer that are exempted from filing by paragraph (1) or paragraph (6) of subdivision (b) of Section 25300 shall be approved prior to use by signature or initial of an officer, partner, or responsible supervisory official of the broker-dealer and the signed or initialed copy shall be retained by the broker-dealer in an appropriate file for a period of three years, subject to examination by the commissioner.

SEC. 31. Section 25532 of the Corporations Code is amended to read:

25532. (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until

qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements of those sections, the commissioner may order the issuer or offerer of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.

(b) If, in the opinion of the commissioner, a person is acting as a broker-dealer or investment adviser, or engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230 or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.

(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

(d) If, after an order has been made under subdivision (a), (b), or (c), a request for hearing is filed in writing within one year of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

If that person fails to file a written request for a hearing within one year from the date of service of the order, the order shall be deemed a final order of the commissioner and is not subject to review by any court or agency, notwithstanding Section 25609.

SEC. 32. Section 25608 of the Corporations Code is amended to read:

25608. (a) The commissioner shall charge and collect the fees fixed in this section and Section 25608.1. All fees charged and collected under this section and Section 25608.1 shall be transmitted to the Treasurer at least weekly, accompanied by a detailed statement thereof and shall be credited to the State Corporations Fund.

(b) The fee for filing an application for a negotiating permit under subdivision (c) of Section 25102 is fifty dollars ($50).

(c) The fee for filing a notice pursuant to paragraph (5) of subdivision (h) of Section 25102 and the fee for filing a notice pursuant to paragraph (4) of subdivision (f) of Section 25102, in addition to the fee prescribed in those paragraphs, if applicable, shall be determined based on the value of the securities proposed to be sold in the transaction for which the notice is filed and in accordance with subdivision (g), and shall be as follows:

Value of Securities Proposed to be Sold	Filing Fee
$25,000 or less	$ 25
$25,001 to $100,000	$ 35
$100,001 to $500,000	$ 50
$500,001 to $1,000,000	$150
Over $1,000,000	$300

(d) The fee for filing an application for designation of an issuer pursuant to subdivision (k) of Section 25100 is fifty dollars ($50).

(e) The fee for filing an application for qualification of the sale of securities by notification under Section 25112 or by permit under paragraph (1) of subdivision (b) of Section 25113 (except applications for qualification by permit of the sale of any guarantee of any security, the fees for which applications are fixed in subdivision (k)) is two hundred dollars ($200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars ($2,500).

The fee for filing a small company application for qualification of the sale of securities by permit under paragraph (2) of subdivision (b) of Section 25113 is two thousand five hundred dollars ($2,500). In the case where the costs of processing a small company application exceed the filing fee, an additional fee shall be charged, not to exceed one thousand dollars ($1,000), over and above the filing fee based on the costs of the salary or other compensation paid to persons processing the application plus overhead costs reasonably incurred in the performance of the work. In determining the costs, the commissioner may use the estimated average hourly cost for all persons processing applications for the fiscal year.

(f) The fee for filing an application for qualification of the sale of securities by coordination under Section 25111 or a notice of intention to sell under subdivision (t) of Section 25100 is two hundred dollars ($200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars ($2,500).

(g) For the purpose of determining the fees fixed in subdivisions (e) and (f):

(1) The value of the securities shall be the price at which the company proposes to sell the securities, or the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration (if other than money) to be received in exchange therefor, or of the securities when sold, whichever is greater.

(2) Interim or voting trust certificates shall have a value equal to the aggregate value of the securities to be represented by the interim or voting trust certificates.

(3) The value of a warrant or right to purchase or subscribe to another security of the same or another issuer shall be an amount equal to the consideration to be paid for that warrant or right plus an amount equal to the consideration to be paid upon purchase of the additional securities, provided that if the latter amount is not determinable at the time of qualification, that amount shall then be the value of the additional securities as determined by the commissioner.

(4) In the case of a share dividend where the shareholders are given an option to accept either cash or additional shares of common stock, the value of the securities to be sold shall be the maximum amount of cash that would be payable in the event that all shareholders elected to accept cash.

(h) The fee for filing an application for qualification of the sale of securities by permit under Section 25121 is:

(1) Two hundred dollars ($200) in connection with any change (including any stock split or reverse stock split or stock dividend, except a stock dividend where the shareholders are given an option to accept either cash or additional shares of common stock) in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(2) Two hundred dollars ($200) plus one-fifth of 1 percent of the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration to be received in exchange therefor, up to a maximum aggregate fee of two thousand five hundred dollars ($2,500), in any exchange of securities by the issuer with its existing security holders exclusively, or in any exchange in connection with any merger or consolidation or purchase of corporate assets in consideration of the issuance of securities.

(i) The fee for filing an application for qualification of the sale of securities by notification under Section 25131 shall be one hundred dollars ($100).

(j) The fee for an application for the removal of any condition under Section 25141 is fifty dollars ($50).

(k) The fee for filing any application for a permit to execute or issue any guarantee of any security is fifty dollars ($50).

(*l*) The fee for acting as escrow holder for securities under Section 25149 is fifty dollars ($50). In addition, a fee of two dollars and fifty cents ($2.50) shall be paid for the deposit with the commissioner of each new certificate or other document resulting from a transfer in escrow.

(m) The fee for filing an application for an order (1) consenting to the transfer in escrow of securities or (2) consenting to the transfer of securities subject to any condition imposed by the commissioner requiring the commissioner's consent to the transfer is twenty dollars ($20) for each transfer.

(n) The filing fee for an amendment to an application filed after the effective date of the qualification of the sale of securities is fifty

dollars ($50) plus any additional fee that would have been required to be paid with the original application for qualification of the sale of securities under this section if the matters set forth in the amendment had been included in the original application.

(o) (1) The fee for filing an application for a broker-dealer certificate under Section 25211 is three hundred dollars ($300).

(2) Each broker-dealer shall pay to the commissioner its pro rata share of all costs and expenses, reasonably incurred in the administration of the broker-dealer program under this division, as estimated by the commissioner for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. The pro rata share shall be the proportion that the broker-dealer and the number of its agents in this state bears to the aggregate number of broker-dealers and agents in this state as shown by records maintained by or on behalf of the commissioner. The pro rata share may include the costs of any examinations, audit, or investigation provided for in subdivision (r).

(3) On or before the 30th day of May in each year, the commissioner shall notify each broker-dealer by mail of the amount assessed and levied against it and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty in addition to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(4) In the levying and collection of the assessment, a broker-dealer shall not be assessed for, nor be permitted to pay, less than seventy-five dollars ($75) per year.

(5) In determining the amount assessed, the commissioner shall consider all appropriations from the State Corporations Fund for the support of the broker-dealer program under this division and all reimbursements applicable to the administration of the broker-dealer program under this division.

(6) If a broker-dealer fails to pay the assessment on or before the 30th day of June following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the broker-dealer. If, after that order is made, a request for hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a broker-dealer shall not conduct business pursuant to this division except as may be permitted by order of the commissioner; provided, however, that the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided under this division.

(p) The commissioner shall charge a fee of twenty-five dollars ($25) for the filing of a notice or report required by rule adopted pursuant to subdivision (b) of Section 25210 or subdivision (b) of Section 25230.

(q) The fee for filing an application for an investment adviser under Section 25231 is one hundred twenty-five dollars ($125), and payment of this amount shall keep the certificate, if granted, in effect during the calendar year during which it is granted. Every investment adviser who has secured from the commissioner a certificate shall, in order to keep the certificate in effect for an additional period, pay a renewal fee of one hundred twenty-five dollars ($125) on or before the 15th day of December preceding the additional period.

(r) The fee for any examination, audit, or investigation is the amount of the salary or other compensation paid to the persons making the examination, audit, or investigation plus the amount of expenses including overhead reasonably incurred in the performance of the work. In determining the costs associated with an examination, audit, or investigation, the commissioner may use the estimated average hourly cost for all persons performing examinations, audits, or investigations for the fiscal year.

(s) The fee for any hearing held by the commissioner pursuant to Section 25142 shall be the sum determined by the commissioner to cover the actual expense of noticing and holding the hearing.

(t) The commissioner may fix by rule a reasonable charge for any publications issued under his or her authority. The charges shall not apply to reports of the commissioner in the ordinary course of distribution.

(u) The fee for filing an offer under subdivision (b) of Section 25507 shall be the amount of filing fee payable under subdivision (e), (f), (h), or (i) of this section if an application had been filed to qualify the transaction in which the securities upon which the offer is to be made were sold in violation of the qualification provisions of this law.

(v) The fee for filing an application for exemption pursuant to subdivision (*l*) of Section 25100 is two hundred fifty dollars ($250).

(w) The commissioner may by rule require payment of a fee for filing a notice or report required by a rule adopted pursuant to Section 25105. The fee required in connection with a transaction as defined by that rule shall not exceed the fees specified in subdivision (c) based on the value of the securities sold, but the commissioner may permit a single notice for more than one transaction.

(x) The fee for filing the first notice of transaction under subdivision (n) of Section 25102 is six hundred dollars ($600).

(y) The fee for filing a notice of transaction under subdivision (o) of Section 25102 shall be the fee for filing an application for qualification of the sale of securities by permit under paragraph (1) of subdivision (b) of Section 25113 as set forth in subdivision (e) of this section.

(z) The fee for filing a notice of transaction under subdivision (h) of Section 25103 shall be six hundred dollars ($600).

SEC. 33. Section 25608.1 is added to the Corporations Code, to read:

25608.1. (a) The fee for an investment company filing a notice pursuant to subdivision (b) of Section 25100.1 is two hundred dollars ($200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars ($2,500).

(b) The fee for an issuer filing a notice pursuant to subdivision (a) of Section 25102.1 is six hundred dollars ($600).

(c) The fee for an issuer filing a notice pursuant to subdivision (c) of Section 25102.1 is two thousand five hundred dollars ($2,500).

(d) The fee for an issuer filing a notice pursuant to subdivision (d) of Section 25102.1 is three hundred dollars ($300).

(e) The fee for an investment adviser filing a notice pursuant to subdivision (b) of Section 25230.1 is one hundred twenty-five dollars ($125) and the fee for filing a notice or report required by rule adopted pursuant to subdivision (c) of Section 25230.1 is twenty-five dollars ($25).

SEC. 34. Section 25612.5 of the Corporations Code is amended to read:

25612.5. (a) To encourage uniform interpretation and administration of this law and effective securities regulation and enforcement, the commissioner may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or other countries, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, any national or international organization or securities officials or agencies, and any governmental law enforcement or regulatory agency.

(b) The cooperation authorized by subdivision (a) includes, but is not limited to, the following actions:

(1) Prescribing rules and forms with a view to achieving maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) Participating in a nationwide central depository for qualification or registration of securities under this law and for documents or records required or allowed to be maintained under this law.

(c) Notwithstanding any other provision of law, any application for qualification, amendment to the application or related securities qualification or registration document or notice under Sections 25100.1, 25101.1, 25102.1, and 25230.1 or record otherwise required to be signed that is filed in this state by means of electronic technology pursuant to a nationwide central depository for qualification or registration of securities shall be deemed to be a valid original document upon reproduction to paper form by the Department of Corporations.

(d) "Electronic technology" includes, but is not limited to, computer modem, magnetic media or optical disk, but does not

include a digital signature that does not meet the requirements of California law.

SEC. 35. Section 25619 of the Corporations Code is amended to read:

25619. (a) The commissioner may destroy any applications, notices, orders, permits, and revoked or surrendered certificates, together with the files and folders, as useless or obsolete, four years after the date of filing or issuance, with the approval of the Department of General Services; provided, that a permanent record shall be maintained of any disciplinary action taken by the commissioner.

(b) When acting as escrow holder for securities, the commissioner may destroy any certificates evidencing securities of any corporation which has been dissolved or whose charter has been suspended for a period of not less than two years for nonpayment of taxes or penalties and may destroy any other records pertaining to the escrow of the securities destroyed, and he or she shall have no further liability or accountability therefor; provided, that the commissioner shall maintain a permanent record containing such information as he or she may by rule prescribe relating to the certificates and records so destroyed.

(c) Copies on microfilm or in other form which may be retained by the commissioner in his discretion of any records destroyed under this section shall be accepted for all purposes as equivalent to the original when certified by the commissioner.

SEC. 36. Section 5.5 of this bill incorporates amendments to Section 25100 of the Corporations Code proposed by both this bill and SB 633. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 25100 of the Corporations Code, and (3) this bill is enacted after SB 633, in which case Section 5 of this bill shall not become operative.

CHAPTER 392

An act to add Section 10229 to the Business and Professions Code, and to add Section 25102.5 to the Corporations Code, relating to real estate.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 27, 1997.]

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

SECTION 1. Section 10229 is added to the Business and Professions Code, to read:

10229. Any transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in the same real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, shall comply with all of the following, except as provided in paragraph (4) of subdivision (i), the terms "sale" and "offer to sell," as used in this section, shall have the same meaning as set forth in Section 25017 of the Corporations Code and include the acts of negotiating and arranging the transaction:

(a) A notice in the following form and containing the following information shall be filed with the commissioner within 30 days after the first transaction and within 30 days of any material change in the information required in the notice:

TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Section 10229 of the Business and Professions Code.

( ) Original Notice ( ) Amended Notice

1. Name of Broker conducting transaction under Section 10229:

_____

2. Firm name (if different from "1"):

_____

3. Street address (main location):

_____

and Street City State ZIP Code

4. Mailing address (if different from "3"):

_____

5. Servicing Agent: Identify the person or persons who will act as the servicing agent in transactions pursuant to Section 10229 (including the undersigned Broker if such is the case):

_____

_____

6. Inspection of trust account (before answering this question, review the provisions of paragraph (3) of subdivision (j) of Section 10229).

CHECK ONLY ONE OF THE FOLLOWING:

( ) The undersigned Broker is (or expects to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229.

( ) The undersigned Broker is NOT (or does NOT expect to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229.

7. Signature. The contents of this notice are true and correct.

_____ _____

Date Type Name of Broker

_____

Signature of Broker or of Designated Officer of Corporate Broker

_____

Type Name of Persons Signing This Notice

NOTE: AN AMENDED NOTICE MUST BE FILED BY THE BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE IN THE INFORMATION REQUIRED TO BE SET FORTH HEREIN.

(b) All advertising employed for transactions under this section shall (1) show the name of the broker and (2) comply with Section 260.302 of Title 10 of the California Code of Regulations, Section 10235 of the Business and Professions Code, and Section 2848 of Title 10 of the California Code of Regulations. Brokers and their agents are

cautioned that a reference to a prospective investor that a transaction is conducted under this section may be deemed misleading or deceptive if this representation may reasonably be construed by the investor as an implication of merit or approval of the transaction.

(c) The real property directly securing the notes or interests is located in this state, the note or notes are not by their terms subject to subordination to any subsequently created deed of trust upon the real property, and the note or notes are not promotional notes secured by liens on separate parcels of real property in one subdivision or in contiguous subdivisions. For purposes of this subdivision, a promotional note means a promissory note secured by a trust deed executed on unimproved real property or executed after construction of an improvement of the property but before the first purchase of the property as so improved, or executed as a means of financing the first purchase of the property as so improved, and which is subordinate or which by its terms may become subordinate to any other trust deed on the property. However, the term "promotional note" does not include either of the following:

(1) A note that was executed in excess of three years prior to being offered for sale.

(2) A note secured by a first trust deed on real property in a subdivision, which evidences a bona fide loan made in connection with the financing of the usual cost of the development in a residential, commercial, or industrial building or buildings on the property under a written agreement providing for the disbursement of the loan funds as costs are incurred or in relation to the progress of the work and providing for title insurance ensuring the priority of the security as against mechanic's and materialmen's liens or for the final disbursement of at least 10 percent of the loan funds after the expiration of the period of the filing of mechanic's and materialmen's liens.

(d) (1) The notes or interests are sold by or through a real estate broker, as principal or agent. At the time the interests are originally sold or assigned, neither the broker nor an affiliate of the broker shall have an interest as owner, lessor, or developer of the property securing the loan, or any contractual right to acquire, lease, or develop the property securing the loan. This provision shall not prohibit a broker from conducting the following transactions if, in either case, the disclosure statement furnished by the broker pursuant to subdivision (k) discloses the interest of the broker or affiliate in the transaction and the circumstances under which the broker or affiliate acquired the interest:

(A) A transaction in which the broker or an affiliate of the broker is acquiring the property pursuant to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or which the broker sold to the holder or holders.

(B) A transaction in which the broker or an affiliate of the broker is reselling from inventory property acquired by the broker pursuant

to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or which the broker sold to the holder or holders.

(2) For the purposes of this subdivision, the following definitions apply:

(A) "Broker" means a person licensed as a broker under any of the provisions of this part.

(B) "Affiliate" means a person controlled by, controlling, or under common control with, the broker.

(e) (1) The notes or interests shall not be sold to more than 10 persons, each of whom meets one or both of the qualifications of income or net worth set forth below and who signs a statement, which shall be retained by the broker for four years conforming to the following:

Transaction Identifier: _____

Name of Purchaser: _____ Date: _____

Check either one of the following, if true.

( ) My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.

( ) My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year, or in the alternative, as estimated for the current year.

_____
Signature

(2) The number of offerees shall not be considered for the purposes of this section.

(3) A husband and wife and their dependents, and an individual and his or her dependents, shall be counted as one person.

(4) A retirement plan, trust, business trust, corporation, or other entity that is wholly owned by an individual, and the individual's spouse, or the individual's dependents, or any combination thereof, shall not be counted separately from the individual but the investments of these entities shall be aggregated with those of the individual for the purposes of the statement required by paragraph (1). If the investments of any entities are required to be aggregated under this subdivision, the adjusted gross income or net worth of these entities may also be aggregated with the net worth, or both, income of the individual.

(5) The "institutional investors" enumerated in subdivision (i) of Section 25102 or subdivision (c) of Section 25104 of the Corporations Code, or in a rule adopted pursuant thereto shall not be counted.

(f) The notes or interests of the purchasers shall be identical in their underlying terms including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being a lender, and the sale to each purchaser pursuant to this section shall be upon the same terms, subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued. This subdivision shall not preclude different selling prices for interests to the extent that these differences are reasonably related to changes in the market value of the loan occurring between the sales of these interests. The interest of each purchaser shall be recorded.

(g) (1) Except as provided in paragraph (2), the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, shall not exceed the following percentages of the current market value of the real property as determined in writing by the broker or appraiser pursuant to Section 10232.6 plus the amount for which the payment of principal and interest in excess of the percentage of current market value is insured for the benefit of the holders of the notes or interests by an insurer admitted to do business in this state by the Insurance Commissioner:

(A) Single–family residence, owner–occupied	80%
(B) Single–family residence, not owner–occupied	75%
(C) Commercial and income–producing properties	65%
(D) Land which has been zoned for (and if required, approved for subdivision as) commercial or residential development	50%
(E) Other real property	35%

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market value of unimproved real property, plus the amount insured as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies upon for his or her determination which shall be retained as a part of the broker's record of the transaction. Either a copy of the

statement or the information contained therein shall be included in the disclosures required pursuant to subdivision (k).

(3) A copy of the appraisal or the broker's evaluation shall be delivered to each purchaser upon request. The broker shall advise purchasers of their right to receive a copy. For purposes of this paragraph, "appraisal" means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question. A broker shall not purport to make an appraisal unless the person so employed is qualified on the basis of special training, preparation, or experience.

(h) The documentation of the transaction shall require that (1) a default upon any interest or note is a default upon all interests or notes, and (2) the holders of more than fifty percent of the record beneficial interests of the notes or interests may be governed by the actions to be taken on behalf of all holders in accordance with Section 2941.9 of the Civil Code in the event of default or foreclosure for matters that require direction or approval of the holders, including designation of the broker, servicing agent, or other person acting on their behalf, and the sale, encumbrance, or lease of real property owned by the holders resulting from foreclosure or receipt of a deed in lieu of foreclosure. The terms called for by this subdivision may be included in the deed of trust, in the assignment of interests, or in any other documentation as is necessary or appropriate to make them binding on the parties.

(i) (1) The broker shall not accept any purchase or loan funds or other consideration from a prospective lender or purchaser, or directly or indirectly cause the funds or other consideration to be deposited in an escrow or trust account, except as to a specific loan or note secured by deed of trust that the broker owns, is authorized to negotiate, or is unconditionally obligated to buy.

(2) All funds received by the broker from the purchasers or lenders shall be handled in accordance with Section 10145 for disbursement to the persons thereto entitled upon recordation of the interests of the purchasers or lenders in the note and deed of trust. No provision of this section shall be construed as modifying or superseding applicable law regulating the escrow holder in any transaction or the handling of the escrow account.

(3) The books and records of the broker or servicing agent, or both, shall be maintained in a manner that readily identifies transactions under this section and the receipt and disbursement of funds in connection with these transactions.

(4) If required by paragraph (3) of subdivision (j), the review by the independent certified public accountant shall include a sample of transactions as reflected in the records of the trust account required pursuant to paragraph (1) of subdivision (j), and the bank statements and supporting documents. These documents shall be reviewed for compliance with this section with respect to the handling and distribution of funds. The sample shall be selected at

random by the accountant from all these transactions and shall consist of the following: (A) three sales made or 5 percent of the sales made pursuant to this section during the period for which the examination is conducted, whichever is greater, and (B) 10 payments processed or 2 percent of payments processed under this exemption during the period for which the examination is conducted, whichever is greater. The transaction that constitutes a "sale," for purposes of this subdivision, is the series of transactions by which a series of notes of a maker, or the interests in the note of a maker, are sold or issued to their various purchasers under this section, including all receipts and disbursements in that process of funds received from the purchasers or lenders. The transaction that constitutes a "payment," for the purposes of this subdivision, is the receipt of a payment from the person obligated on the note, or from some other person on behalf of the person so obligated, including the broker or servicing agent, and the distribution of that payment to the persons entitled thereto. If such a payment involves an advance paid by the broker or servicing agent as the result of a dishonored check, the inspection shall identify the source of funds from which the payment was made or, in the alternative, the steps that are reasonably necessary to determine that there was not a disbursement of trust funds. The specific provisions of this section, compliance with which is to be inspected by the accountant, are the following: paragraphs (1), (2), and (3) of subdivision (i) and paragraphs (1) and (2) of subdivision (j).

(5) Within 30 days of the close of the period for which the report is made, or within any additional time as the commissioner may in writing allow in a particular case, the accountant shall forward to the broker or servicing agent, as the case may be, and to the commissioner, the report of the accountant, stating that the inspection was performed in accordance with this section, listing the sales and the payments examined, specifying the nature of the deficiencies, if any, noted by the accountant with respect to each sale or payment, together with any further information as the accountant may wish to include, such as corrective steps taken with respect to any deficiency so noted, or stating that no deficiencies were observed. If the broker meets the threshold criteria of Section 10232, the report of the accountant shall be submitted as part of the quarterly reports required under Section 10232.25.

(j) The notes or interests shall be sold subject to a written agreement that obligates a licensed real estate broker, or a person exempted from the licensing requirement for real estate brokers under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, to act as agent for the purchasers or lenders to service the note or notes and deed of trust, including the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default. A copy of this servicing agreement shall be delivered to each purchaser. The broker shall

offer to the lenders or purchasers the services of the broker or one or more affiliates of the broker, or both, as servicing agent for each transaction conducted pursuant to this section. The agreement shall require all of the following:

(1) (A) That payments received on the note or notes be immediately deposited to a trust account maintained in accordance with the provisions of law and rules for trust accounts of licensed real estate brokers contained in Section 10145 of this code and Article 15 (commencing with Section 2830) of Chapter 6 of Title 10 of the California Code of Regulations and in accordance with this section.

(B) That these payments shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received.

(2) That payments received on the note or notes shall be transmitted to the purchasers or lenders pro rata according to their respective interests within 25 days after receipt thereof by the agent. If the source for the payment is not the maker of the note, the agent shall inform the purchasers or lenders of the source for payment. A broker or servicing agent who transmits to the purchaser or lenders the broker's or servicing agent's own funds to cover payments due from the borrower but unpaid as a result of a dishonored check may recover the amount of the advances from the trust fund when the past due payment is received. However, nothing contained in this section shall authorize the broker, servicing agent, or any other person to issue, or to engage in any practice constituting, any guarantee, or to engage in the practice of advancing payments on behalf of the borrower.

(3) If the broker, directly or through an affiliate, is the servicing agent for notes or interests sold pursuant to this section upon which the payments due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars ($125,000) or the number of persons entitled to the payments exceeds 120, the trust account or accounts of that broker or affiliate shall be inspected at no less than three-month intervals during which the volume is maintained, by an independent certified public accountant. Within 30 days after the close of the period for which the review is made, the report of the accountant shall be forwarded as provided in paragraph (5) of subdivision (i). If the broker is required to file an annual report pursuant to subdivision (n) or Section 10232.2, the quarterly report pursuant to this subdivision need not be filed for the last quarter of the year for which the annual report is made. For the purposes of this subdivision, an affiliate of a broker is any person controlled by, controlling, or under common control with the broker.

(4) Unless the servicing agent will receive notice pursuant to Section 2924b of the Civil Code, the servicing agent shall file a request for notice of default upon any prior encumbrances and promptly notify the purchasers or lenders of any default on the prior

encumbrances or on the note or notes subject to the servicing agreement.

(5) The servicing agent shall promptly forward copies of the following to each purchaser or lender:

(A) Any notice of trustee sale filed on behalf of the purchasers or lenders.

(B) Any request for reconveyance of the deed of trust received on behalf of the purchasers or lenders.

(k) The broker shall disclose in writing to each purchaser or lender the material facts concerning the transaction on a disclosure form adopted or approved by the commissioner pursuant to Section 10232.5, subject to the following:

(1) The disclosure form shall include a description of the terms upon which the note and deed of trust are being sold, including the terms of the undivided interests being offered therein, including the following:

(A) In the case of the sale of an existing note:

(i) The aggregate sale price of the note.

(ii) The percent of the premium over or discount from the principal balance plus accrued but unpaid interest.

(iii) The effective rate of return to the purchasers if the note is paid according to its terms.

(iv) The name and address of the escrowholder for the transaction.

(v) A description of, and the estimated amount of, each cost payable by the seller in connection with the sale and a description of, and the estimated amount of, each cost payable by the purchasers in connection with the sale.

(B) In the case of the origination of a note:

(i) The name and address of the escrowholder for the transaction.

(ii) The anticipated closing date.

(iii) A description of, and the estimated amount of, each cost payable by the borrower in connection with the loan and a description of, and the estimated amount of, each cost payable by the lenders in connection with the loan.

(2) A copy of the written statement or information contained therein, as required under paragraph (2) of subdivision (g) shall be included in the disclosure form.

(3) Any interest of the broker or affiliate in the transaction as described in subdivision (d) shall be included with the disclosure form.

(4) When the particular circumstances of a transaction make information not specified in the disclosure form material, or essential to make the information provided in the form not misleading, and the other information is known to the broker, the other information shall also be provided by the broker.

(*l*) The broker or servicing agent shall furnish any purchaser of a note or interest, upon request, with the names and addresses of the purchasers of the other notes or interests in the loan.

(m) No agreement in connection with a transaction covered by this section shall grant to the real estate broker, the servicing agent, or any affiliate of the broker or agent the option or election to acquire the interests of the purchasers or lenders or to acquire the real property securing the interests. This subdivision shall not prohibit the broker or affiliate from acquiring the interests with the consent of the purchasers or lenders whose interests are being purchased, or the property with the consent of the purchasers or lenders, if the consent is given at the time of the acquisition.

(n) Each broker who conducts transactions under this section and meets the criteria of paragraph (3) of subdivision (j) shall file with the commissioner an annual report of a review of its trust account. The report shall be prepared and filed in accordance with subdivision (a) of Section 10232.2 and the rules and procedures thereunder of the commissioner. That report shall cover the broker's transactions under this section and if the broker also meets the threshold criteria set forth in Section 10232, the broker's transactions subject to that section shall be included as well.

(o) Each broker conducting transactions pursuant to this section and who meets the criteria of paragraph (3) of subdivision (j) shall file with the commissioner a report of the transactions which is prepared in accordance with subdivision (c) of Section 10232.2. If the broker also meets the threshold criteria of Section 10232, the report shall include the transactions subject to that section as well. This report shall be confidential pursuant to subdivision (f) of Section 10232.2.

(p) The jurisdiction of the Commissioner of Corporations under the Corporate Securities Law of 1968 shall be neither limited nor expanded by the provisions of the section. Nothing in this section shall be construed to supersede or restrict the application of the Corporate Securities Law of 1968. A transaction under this section shall not be construed to be a transaction involving the issuance of securities subject to authorization by the Real Estate Commissioner under subdivision (e) of Section 25100 of the Corporations Code.

(q) Nothing in this section shall be construed to change the agency relationships between the parties where they exist or to limit in any manner the fiduciary duty of brokers to borrowers, lenders, and purchasers of notes or interests, in transactions subject to this section.

SEC. 2. Section 25102.5 is added to the Corporations Code, to read:

25102.5. There shall be exempted from Section 25110 a transaction that is the sale of a series of notes secured directly by an interest in the same real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series

transaction, that complies with all of the provisions of Section 10229 of the Business and Professions Code. For purposes of this section, a real estate broker licensed by the Real Estate Commissioner of this state who engages in the offer and sale of notes secured directly by real property of various makers, which are a series of notes or notes in which undivided interests are offered and sold, shall be deemed to be the issuer of these notes and undivided interests if the notes of the various makers are offered and sold pursuant to a plan or arrangement that is common to the various makers with respect to documentation and loan standards and that include provisions for servicing these notes on behalf of purchasers.

SEC. 3. It is the intent of the Legislature to maintain or enhance the standards of consumer protection contained in Section 10229 of the Business and Professions Code as added by this act. In addition, it is the intent of the Legislature to streamline administrative functions by vesting in the Department of Real Estate the responsibility under the Real Estate Law for reporting by, and auditing of, real estate brokers acting pursuant to Section 10229 of the Business and Professions Code as added by this act.

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 393

An act to amend Sections 19606.3 and 19606.4 of the Business and Professions Code, relating to horseracing, and making an appropriation therefor.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 27, 1997.]

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

SECTION 1. Section 19606.3 of the Business and Professions Code is amended to read:

19606.3. Ten percent of all revenues distributed to racing associations for payment to the state as license fees from satellite

wagering facilities located at fairs in the northern zone shall be deposited in a special account in the fund and, notwithstanding Section 13340 of the Government Code, are hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings to achieve the purposes of Section 19606.4.

SEC. 2. Section 19606.4 of the Business and Professions Code is amended to read:

19606.4. It is the intent of the Legislature that funds allocated pursuant to Section 19606.3 be used primarily at fair racing meetings in the northern zone with a daily average handle of more than three hundred thousand dollars ($300,000). The Legislature further finds that its intent is that these allocations be used to bring the purses at these fairs, exclusive of purses for stakes races and special events, to a level of at least 80 percent of purses for similar classes of horses at private associations in the northern zone. The funds shall be used among all breeds. For fair racing meetings in the northern zone with a daily average handle of three hundred thousand dollars ($300,000) or less, it is the intent of the Legislature to bring the purses to a level of at least 25 percent of purses for similar classes of horses at private associations in the northern zone. Any funds remaining after meeting the requirements of this section shall be used at fair meetings in the northern zone as additional purses.

CHAPTER 394

An act to amend Sections 81007.5, 82015, 82025, 85200, and 85201 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 27, 1997.]

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

SECTION 1. Section 81007.5 of the Government Code is amended to read:

81007.5. (a) Any report or statement or copies thereof required to be filed with any official under Chapter 4 (commencing with Section 84100) or Chapter 7 (commencing with Section 87100) may be faxed by the applicable deadline, provided that the required originals or paper copies are sent by first-class mail or by any other personal delivery or guaranteed overnight delivery service within 24 hours of the applicable deadline and provided that the total number of pages of each report or statement faxed is no more than 30 pages.

(b) A faxed report or statement shall not be deemed filed if the faxed report or statement is not a true and correct copy of the original or copy of the report or statement personally delivered or sent by

first-class mail or guaranteed overnight delivery service pursuant to subdivision (a).

(c) A filing officer who receives a faxed report or statement shall make the report or statement available to the public in the same manner as provided in Section 81008. If the faxed report or statement is requested prior to the receipt of the original or copy of the report or statement by the filing officer, the filing officer shall inform the requester that the faxed report or statement will not be considered a filed report or statement if the requirements of subdivision (b) have not been met by the filer.

SEC. 2. Section 82015 of the Government Code is amended to read:

82015. "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fundraising events; the candidate's own money or property used on behalf of his or her candidacy other than personal funds of the candidate used to pay either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

The term "contribution" further includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

The term "contribution" does not include amounts received pursuant to an enforceable promise to the extent such amounts have been previously reported as a contribution. However, the fact that such amounts have been received shall be indicated in the appropriate campaign statement.

The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars ($500) or less.

Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

SEC. 2.5. Section 82015 of the Government Code is amended to read:

82015. (a) "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

(b) (1) A payment made at the behest of a committee as defined in subdivision (a) of Section 82013 is a contribution to the committee unless full and adequate consideration is received from the committee for making the payment.

(2) A payment made at the behest of a candidate is a contribution to the candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

(A) Full and adequate consideration is received from the candidate.

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars ($5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to the provisions of subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five

thousand dollars ($5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.

(C) For purposes of subparagraph (B), a payment is made for purposes related to a candidate's candidacy for elective office if all or a portion of the payment is used for election-related activities. For purposes of this subparagraph, "election-related activities" shall include, but are not limited to, the following:

(i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(ii) Communications that contain reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for elective office.

(iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.

(iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clauses (i), (ii), or (iii), above.

(v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.

(vi) Preparing campaign budgets.

(vii) Preparing campaign finance disclosure statements.

(viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(D) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate.

(c) The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the candidate's own money or property used on behalf of his or her candidacy other than personal funds of the candidate used to pay either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code ; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any

person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

(d) The term "contribution" further includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

(e) The term "contribution" does not include amounts received pursuant to an enforceable promise to the extent those amounts have been previously reported as a contribution. However, the fact that those amounts have been received shall be indicated in the appropriate campaign statement.

(f) The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars ($500) or less.

(g) Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his or her own travel expenses if the payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

SEC. 3. Section 82025 of the Government Code is amended to read:

82025. "Expenditure" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. "Expenditure" does not include a candidate's use of his or her own money to pay for either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

SEC. 4. Section 85200 of the Government Code, as amended by Section 1 of Chapter 289 of the Statutes of 1996, is amended to read:

85200. Prior to the solicitation or receipt of any contribution or loan, an individual who intends to be a candidate for an elective office shall file with the Secretary of State an original statement, signed under penalty of perjury, of intention to be a candidate for a specific office.

For purposes of this section, "contribution" and "loan" do not include any payments from the candidate's personal funds for a candidate filing fee or a candidate statement of qualifications fee.

SEC. 5. Section 85201 of the Government Code, as amended by Section 2 of Chapter 289 of the Statutes of 1996, is amended to read:

85201. (a) Upon the filing of the statement of intention pursuant to Section 85200, the individual shall establish one campaign

contribution account at an office of a financial institution located in the state.

(b) Upon the establishment of an account, an original statement setting forth the name of the financial institution, the specific location, and the account number shall be filed with the Secretary of State within 10 days, except as provided by subdivision (h).

(c) All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee shall be deposited in the account.

(d) Any personal funds which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure.

(e) All campaign expenditures shall be made from the account.

(f) Subdivisions (d) and (e) do not apply to a candidate's payment for a filing fee and statement of qualifications from his or her personal funds.

(g) This section does not apply to a candidate who will not receive contributions and who makes expenditures from personal funds of less than one thousand dollars ($1,000) in a calendar year to support his or her candidacy. For purposes of this section, a candidate's payment for a filing fee and statement of qualifications shall not be included in calculating the total expenditures made.

(h) Before expending one thousand dollars ($1,000) or more in a calendar year, any candidate who does not establish a campaign contribution account pursuant to subdivision (g) shall establish one campaign contribution account at an office of a financial institution located in the state and file the information required in the manner prescribed in subdivision (b) with the Secretary of State within five days of establishing the account.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 82015 of the Government Code proposed by this bill and SB 124. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 82015 of the Government Code, and (3) this bill is enacted after SB 124, in which case Section 82015 of the Government Code, as amended by SB 124, 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. 7. 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. 8. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 395

An act to amend Section 2025 of, and to add Section 2025.5 to, the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 27, 1997.]

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

SECTION 1. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to

produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the

county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a

deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a

declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or

opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by

attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party

offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good

cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may

approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the

motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2) for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying,

(iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 2. Section 2025.5 is added to the Code of Civil Procedure, to read:

2025.5. (a) Unless the court issues an order to the contrary, a copy of the transcript, videotape, or other recording of testimony at the deposition, if still in the possession of the deposition officer, shall be made available by the deposition officer to any person requesting a copy thereof upon payment of a reasonable charge set by the deposition officer.

(b) If a copy is requested from the deposition officer, the deposition officer shall mail a notice to all parties attending the deposition and to the deponent at his or her last known address advising them that (1) the copy is being sought, (2) the name of the person requesting the copy, and (3) the right to seek a protective order pursuant to subdivision (i) of Section 2025. If a protective order is not served on the deposition officer within 30 days of the mailing of the notice, the deposition officer shall make the copy available to the person requesting the copy.

(c) This section shall apply only to recorded testimony taken at depositions occurring on or after January 1, 1998.

CHAPTER 396

An act to amend Sections 3021 and 6323 of, and to add Section 6346 to, the Family Code, relating to family law.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 27, 1997.]

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

SECTION 1. Section 3021 of the Family Code is amended to read:

3021. This part applies in any of the following:

(a) A proceeding for dissolution of marriage.

(b) A proceeding for nullity of marriage.

(c) A proceeding for legal separation of the parties.

(d) An action for exclusive custody pursuant to Section 3120.

(e) A proceeding to determine custody or visitation in a proceeding pursuant to the Domestic Violence Prevention Act (Division 10 (commencing with Section 6200)).

In an action under Section 6323, nothing in this subdivision shall be construed to authorize custody or visitation rights to be granted to any party to a Domestic Violence Prevention Act proceeding who has not established a parent and child relationship pursuant to paragraph (2) of subdivision (a) of Section 6323.

(f) A proceeding to determine custody or visitation in an action pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(g) A proceeding to determine custody or visitation in an action brought by the district attorney pursuant to Section 11350.1 of the Welfare and Institutions Code.

SEC. 2. Section 6323 of the Family Code is amended to read:

6323. (a) Subject to Section 3064:

(1) The court may issue an ex parte order determining the temporary custody and visitation of a minor child on the conditions the court determines to a party who has established a parent and child relationship pursuant to paragraph (2). The parties shall inform the court if any custody or visitation orders have already been issued in any other proceeding.

(2) (A) In making a determination of the best interests of the child and in order to limit the child's exposure to potential domestic violence and to ensure the safety of all family members, if the party who has obtained the restraining order has established a parent and child relationship and the other party has not established that relationship, the court may award temporary sole legal and physical

custody to the party to whom the restraining order was issued and may make an order of no visitation to the other party pending the establishment of a parent and child relationship between the child and the other party.

(B) A party may establish a parent and child relationship for purposes of subparagraph (A) only by offering proof of any of the following:

(i) The party gave birth to the child.

(ii) The child is conclusively presumed to be a child of the marriage between the parties, pursuant to Section 7540, or the party has been determined by a court to be a parent of the child, pursuant to Section 7541.

(iii) Legal adoption or pending legal adoption of the child by the party.

(iv) The party has signed a valid voluntary declaration of paternity, which has been in effect more than 60 days prior to the issuance of the restraining order, and that declaration has not been rescinded or set aside.

(v) A determination made by the juvenile court that there is a parent and child relationship between the party offering the proof and the child.

(vi) A determination of paternity made in a proceeding to determine custody or visitation in a case brought by the district attorney pursuant to Section 11350.1 of the Welfare and Institutions Code.

(vii) The party has been determined to be the parent of the child through a proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(viii) Both parties stipulate, in writing or on the record, for purposes of this proceeding, that they are the parents of the child.

(b) The court shall not make a finding of paternity in this proceeding, and any order issued pursuant to this section shall be without prejudice in any other action brought to establish a parent and child relationship.

(c) When making any order for custody or visitation pursuant to this section, the court's order shall specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for custody or visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(d) When making an order for custody or visitation pursuant to this section, the court shall consider whether the best interest of the child, based upon the circumstances of the case, requires that any visitation or custody arrangement shall be limited to situations in

which a third person, specified by the court, is present, or whether visitation or custody shall be suspended or denied.

SEC. 3. Section 6346 is added to the Family Code, to read:

6346. The court may make appropriate custody and visitation orders pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12) after notice and a hearing under this section when the party who has requested custody or visitation has not established a parent and child relationship under subparagraph (B) of paragraph (2) of subdivision (a) of Section 6323, but has taken steps to establish that relationship by filing an action under the Uniform Parentage Act.

CHAPTER 397

An act to amend Sections 11100, 11100.1, 11103, 11106, 11107, and 11107.1 of, and to add Section 11106.5 to, the Health and Safety Code, relating to controlled substances.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 27, 1997.]

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

SECTION 1. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes any of the following substances to any person or business entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid.
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.
(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.

(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.
(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.
(34) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) Any manufacturer, wholesaler, retailer, or other person in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (A) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (B) proper identification from the purchaser. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(2) For the purposes of this subdivision, "proper identification" for in-state or out-of-state purchasers includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser, or individual representing the purchasing business entity, which contains a photograph of the purchaser or purchasing individual, and includes the current domicile or mailing address of the purchaser or purchasing individual, other than a post office box number. "Proper identification" also includes the motor vehicle license number of the motor vehicle used by the purchaser or

purchasing individual at the time of transfer or the name of the common carrier and the name and valid motor vehicle operator license number of the driver of the common carrier, and the signature of the purchaser, purchasing individual, or driver of the common carrier. The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature as a witness to the signature and identification of the purchaser, purchasing individual, or driver of the common carrier.

(d) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. However, the Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that the following exist:

(1) A pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances.

(2) The recipient has established a record of utilization of the substance or substances for lawful purposes.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer licensed by the State Department of Health Services or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, veterinarian, or retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) (A) Except as otherwise provided in subparagraphs (B) and (C), this section shall not apply to any sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder.

(B) This section shall apply to preparations in solid dosage form containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine as the only active medicinal ingredient.

(C) This section shall not apply to the sale of ordinary over-the-counter ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products by retail distributors as defined by this article. However, in no instance shall the sale of any product not defined as ordinary over-the-counter ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine by retail distributors be greater than 24 grams of ephedrine, 24 grams of pseudoephedrine, 24 grams of norpseudoephedrine, or 24 grams of phenylpropanolamine in a single transaction.

(D) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement.

(5) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g) (1) It is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) It is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

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

(h) For the purposes of this article, the following terms have the following meanings:

(1) "Drug store" is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) "General merchandise store" is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) "Grocery store" is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) "Ordinary over-the-counter ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product" means a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine that is required to be reported pursuant to this article and that is, if not a liquid, either sold in package sizes of not more than 3.0 grams of ephedrine base, 3.0 grams of pseudoephedrine base, 3.0 grams of norpseudoephedrine base, or 3.0 grams of phenylpropanolamine base, and is packaged in blister packs, each blister containing not more than two dosage units, or where the use of blister packs is technically infeasible, is packaged in unit dose packets or pouches; or, if a liquid, sold in package sizes of not more than 3.0 grams of ephedrine base, 3.0 grams of pseudoephedrine base, 3.0 grams of norpseudoephedrine base, or 3.0 grams of phenylpropanolamine base.

(5) "Retail distributor" means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. "Retail distributor" includes an entity that makes a direct sale, but does not include the parent company of such an entity if the company is not involved in direct sales regulated by this article.

(6) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in subparagraph (C) of paragraph (4) of subdivision (e). "Sale for personal use" also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

SEC. 2. Section 11100.1 of the Health and Safety Code is amended to read:

11100.1. (a) Any manufacturer, wholesaler, retailer, or other person in this state who obtains from a source outside of this state any substance specified in subdivision (a) of Section 11100 shall submit a report of that transaction to the Department of Justice 21 days in advance of obtaining the substance. However, the Department of Justice may authorize the submission of reports within 72 hours, or within a timeframe and in a manner acceptable to the Department of Justice, after the actual physical obtaining of a specified substance with respect to repeated transactions between a furnisher and an obtainer involving the substances, if the Department of Justice determines that the obtainer has established a record of utilization of the substances for lawful purposes. This section does not apply to any person whose prescribing or dispensing activities are subject to the reporting requirements set forth in Section 11164, or to any

manufacturer, wholesaler, retailer, or other person who is licensed by either the State Department of Health Services or the California State Board of Pharmacy, and is also registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(b) (1) Any person specified in subdivision (a) who does not submit a report as required by that subdivision shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) Any person specified in subdivision (a) who has been previously convicted of a violation of subdivision (a) who subsequently does not submit a report as required by subdivision (a) shall be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both that fine and imprisonment.

SEC. 3. Section 11103 of the Health and Safety Code is amended to read:

11103. The theft or loss of any substance regulated pursuant to Section 11100 discovered by any permittee or any person regulated by the provisions of this chapter shall be reported in writing to the Department of Justice within three days after the discovery.

Any difference between the quantity of any substance regulated pursuant to Section 11100 received and the quantity shipped shall be reported in writing to the Department of Justice within three days of the receipt of actual knowledge of the discrepancy.

Any report made pursuant to this section shall also include the name of the common carrier or person who transports the substance and date of shipment of the substance.

SEC. 4. Section 11106 of the Health and Safety Code is amended to read:

11106. (a) (1) Any manufacturer, wholesaler, retailer, or any other person or business entity in this state who sells, transfers, or otherwise furnishes any substance specified in subdivision (a) of Section 11100 to a person or business entity in this state or any other state or who obtains from a source outside of the state any substance specified in subdivision (a) of Section 11100 shall submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice. An intracompany transfer does not require a permit if the transferor is a permittee. Transfers between company partners or between a company and an analytical laboratory do not require a permit if the transferor is a permittee and a report as to the nature and extent of the transfer is made to the Department of Justice pursuant to Section 11100 or 11100.1. This paragraph shall not apply to any manufacturer, wholesaler, retailer, or other person who is licensed by either the State Department of Health Services or the California State Board of Pharmacy, and is also

registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(2) Except as provided in paragraph (3), no permit shall be required of any manufacturer, wholesaler, retailer, or other person for the sale, transfer, furnishing, or obtaining of any product which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder.

(3) A permit shall be required for the sale, transfer, furnishing, or obtaining of preparations in solid dosage form containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine as the only active medicinal ingredient, unless (A) the transaction involves the sale of ordinary over-the-counter ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products by retail distributors as defined by this article, or (B) the transaction is made by a person or business entity exempted from the permitting requirements of this subdivision under paragraph (1).

(b) The department shall provide application forms, which are to be completed under penalty of perjury, in order to obtain information relating to the identity of any applicant applying for a permit, including, but not limited to, the business name of the applicant or the individual name, and if a corporate entity, the names of its board of directors, the business in which the applicant is engaged, the business address of the applicant, a full description of any substance to be sold, transferred, or otherwise furnished or to be obtained, the specific purpose for the use, sale, or transfer of those substances specified in subdivision (a) of Section 11100, the training, experience, or education relating to this use, and any additional information requested by the department relating to possible grounds for denial as set forth in this section, or by applicable regulations adopted by the department. The requirement for the specific purpose for the use, sale, or transfer of those substances specified in subdivision (a) of Section 11100 does not require an applicant or permittee to reveal their chemical processes that are typically considered trade secrets and proprietary business information.

(c) Applicants and permittees shall authorize the department, or any of its duly authorized representatives, as a condition of being permitted, to make any examination of the books and records of any applicant, permittee, or other person, or visit and inspect the business premises of any applicant or permittee during normal business hours, as deemed necessary to enforce this chapter.

(d) An application may be denied, or a permit may be revoked or suspended, for reasons which include, but are not limited to, the following:

(1) Materially falsifying an application for a permit or an application for the renewal of a permit.

(2) If any individual owner, manager, agent, representative, or employee for the applicant who has direct access, management, or control for any substance listed under subdivision (a) of Section 11100, is or has been convicted of a misdemeanor or felony relating to any of the substances listed under subdivision (a) of Section 11100, any misdemeanor drug-related offense, or any felony under the laws of this state or the United States.

(3) Failure to maintain effective controls against the diversion of precursors to unauthorized persons or entities.

(4) Failure to comply with this article or any regulations of the department adopted thereunder.

(5) Failure to provide the department, or any duly authorized federal or state official, with access to any place for which a permit has been issued, or for which an application for a permit has been submitted, in the course of conducting a site investigation, inspection, or audit; or failure to promptly produce for the official conducting the site investigation, inspection, or audit any book, record, or document requested by the official.

(6) Failure to provide adequate documentation of a legitimate business purpose involving the applicant's or permittee's use of any substance listed in subdivision (a) of Section 11100.

(7) Commission of any act which would demonstrate actual or potential unfitness to hold a permit in light of the public safety and welfare, which act is substantially related to the qualifications, functions, or duties of a permitholder.

(8) If any individual owner, manager, agent, representative, or employee for the applicant who has direct access, management, or control for any substance listed under subdivision (a) of Section 11100, willfully violates or has been convicted of violating, any federal, state, or local criminal statute, rule, or ordinance regulating the manufacture, maintenance, disposal, sale, transfer, or furnishing of any of those substances.

(e) Notwithstanding any other provision of law, an investigation of an individual applicant's qualifications, or the qualifications of an applicant's owner, manager, agent, representative, or employee who has direct access, management, or control of any substance listed under subdivision (a) of Section 11100, for a permit may include review of his or her summary criminal history information pursuant to Sections 11105 and 13300 of the Penal Code, including, but not limited to, records of convictions, regardless of whether those convictions have been expunged pursuant to Section 1204.5 of the Penal Code, and any arrests pending adjudication.

(f) The department may retain jurisdiction of a canceled or expired permit in order to proceed with any investigation or disciplinary action relating to a permittee.

(g) The department may grant permits on forms prescribed by it, which shall be effective for not more than one year from the date of issuance and which shall not be transferable. Applications and permits shall be uniform throughout the state, on forms prescribed by the department.

(h) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department which shall not exceed the application processing costs of the department.

(i) A permit granted pursuant to this article may be renewed one year from the date of issuance, and annually thereafter, following the timely filing of a complete renewal application with all supporting documents, the payment of a permit renewal fee not to exceed the application processing costs of the department, and a review of the application by the department.

(j) Selling, transferring, or otherwise furnishing or obtaining any substance specified in subdivision (a) of Section 11100 without a permit is a misdemeanor or a felony.

(k) (1) No person under 18 years of age shall be eligible for a permit under this section.

(2) No business for which a permit has been issued shall employ a person under 18 years of age in the capacity of a manager, agent, or representative.

(*l*) (1) An applicant, or an applicant's employees who have direct access, management, or control of any substance listed under subdivision (a) of Section 11100, for an initial permit shall submit with the application two sets of 10-print fingerprint cards for each individual acting in the capacity of an owner, manager, agent, or representative for the applicant, unless the applicant's employees are exempted from this requirement by the Department of Justice. These exemptions may only be obtained upon the written request of the applicant.

(2) In the event of subsequent changes in ownership, management, or employment, the permittee shall notify the department in writing within 15 calendar days of the changes, and shall submit two sets of 10-print fingerprint cards for each individual not previously fingerprinted under this section.

SEC. 5. Section 11106.5 is added to the Health and Safety Code, to read:

11106.5. (a) The Bureau of Narcotic Enforcement, or an administrative law judge sitting alone as provided in subdivision (h), may upon petition issue an interim order suspending any permittee or imposing permit restrictions. The petition shall include affidavits that demonstrate, to the satisfaction of the bureau, both of the following:

(1) The permittee has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the permitted activity.

(2) Permitting the permittee to operate, or to continue to operate without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the permittee, unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the permittee shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the bureau in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the permittee shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The permittee shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the bureau to provide a hearing within 20 days following issuance of the interim order without notice, unless the permittee waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the permittee may do the following:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the permittee upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The bureau, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the bureau shall determine whether the order shall remain in effect, be dissolved, or be modified.

(f) The bureau shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the permittee files a notice of defense, the hearing shall be held within 30 days of the agency's receipt of the notice of defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only

in the superior court in and for the County of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the bureau abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent bureau has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The bureau may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the bureau hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the bureau on matters of law. The bureau shall exercise all other powers relating to the conduct of the hearing, but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the bureau relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the bureau. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any permittee, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the permittee was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the bureau.

If the interim order issued by the bureau provides for anything less than a complete suspension of the permittee and the permittee violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the bureau may, upon notice to the permittee and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. The bureau may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

SEC. 6. Section 11107 of the Health and Safety Code is amended to read:

11107. (a) Any manufacturer, wholesaler, retailer, or other person in this state who purchases for sale, or who sells to any person in this state or any other state, any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, where the value of the goods sold in the transaction exceeds one hundred dollars ($100) and the payment for the goods is made in cash, by personal check, cashier's check, money order, or any other negotiable instrument shall do the following:

(1) Notwithstanding any other law, prepare a bill of sale which both identifies the specific items and quantities purchased and the proper purchaser identification information, both of which shall be entered onto the bill of sale or a legible copy of the bill of sale, and shall also affix on the bill of sale his or her signature as witness to the purchase and identification of the purchaser.

(2) Notwithstanding any other law, require proper purchaser identification for in-state purchases that includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, and the signature of the purchaser. Proper purchaser identification for out-of-state purchases includes all of the above, except the motor vehicle license number and the signature of the purchaser. The out-of-state purchase information shall also include the means by which the purchase was delivered or provided to the purchaser and the delivery address, if different from the identification address provided by the purchaser.

(3) Retain the original bill of sale containing the purchaser identification information for three years in a readily presentable manner, and present the bill of sale containing the purchaser identification information upon demand by any law enforcement officer or authorized representative of the Attorney General. Copies of these bills of sale obtained by representatives of the Attorney General shall be maintained by theDepartment of Justice for a period of not less than five years.

(b) This section shall not apply to any wholesaler who is licensed by the California State Board of Pharmacy and registered with the federal Drug Enforcement Administration of the United States Department of Justice and who sells laboratory glassware or apparatus, any chemical reagent or solvent, or any combination

thereof, to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian.

(c) A violation of this section is a misdemeanor.

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Laboratory glassware" includes, but is not limited to, condensers, flasks, separatory funnels, and beakers.

(2) "Apparatus" includes, but is not limited to, heating mantles, ring stands, and rheostats.

(3) "Chemical reagent" means a chemical that reacts chemically with one or more precursors, but does not become part of the finished product.

(4) "Chemical solvent" means a chemical that does not react chemically with a precursor or reagent and does not become part of the finished product. A "chemical solvent" helps other chemicals mix, cools chemical reactions, and cleans the finished product.

SEC. 7. Section 11107.1 of the Health and Safety Code is amended to read:

11107.1. (a) Any manufacturer, wholesaler, retailer, or other person in this state who sells to any person in this state or any other state any quantity of sodium cyanide, potassium cyanide, cyclohexanone, bromobenzene, magnesium turnings, mercuric chloride, sodium metal, lead acetate, paladium black, red phosphorous, iodine, hydrogen chloride gas, trichlorofluoromethane (fluorotrichloromethane), dichlorodifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane (trichlorotrifluoroethane), sodium acetate, or acetic anhydride shall do the following:

(1) Notwithstanding any other law, prepare a bill of sale which both identifies the specific items and quantities purchased and the proper purchaser identification information, both of which shall be entered onto the bill of sale or a legible copy of the bill of sale, and shall also affix on the bill of sale his or her signature as witness to the purchase and identification of the purchaser.

(2) Notwithstanding any other law, require proper purchaser identification for in-state purchases that includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, the Environmental Protection Agency certification number or business resale number assigned to the individual or business entity for which the individual is purchasing any chlorofluorocarbon product, and the signature of the purchaser. Proper purchaser identification for out-of-state purchases includes all of the above, except the motor vehicle license number and the signature of the purchaser. The out-of-state purchase information shall also include the means by

which the purchase was delivered or provided to the purchaser and the delivery address, if different from the identification address provided by the purchaser.

(3) Retain the original bill of sale containing the purchaser identification information for three years in a readily presentable manner, and present the bill of sale containing the purchaser identification information upon demand by any law enforcement officer or authorized representative of the Attorney General. Copies of these bills of sale obtained by representatives of the Attorney General shall be maintained by the Department of Justice for a period of not less than five years.

(b) Any manufacturer, wholesaler, retailer, or other person in this state who purchases any item listed in subdivision (a) of Section 11107.1 shall do the following:

(1) Provide on the record of purchase information on the source of the items purchased, the date of purchase, a description of the specific items, the quantities of each item purchased, and the cost of the items purchased.

(2) Retain the record of purchase for three years in a readily presentable manner and present the record of purchase upon demand to any law enforcement officer or authorized representative of the Attorney General.

(c) For purposes of this section, these requirements do not apply to either of the following:

(1) Any sale of tincture of iodine or any topical solution containing iodine that is equal to or less than one hundred dollars ($100).

(2) Any sale of iodine made to a licensed health care facility, any manufacturer licensed by the State Department of Health Services, or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes the iodine to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian.

(d) A violation of this section is a misdemeanor.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 398

An act to add and repeal Article 4 (commencing with Section 7360) to Chapter 2 of Part 2 of Division 6 of the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor August 29, 1997. Filed with Secretary of State August 29, 1997.]

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

SECTION 1. Article 4 (commencing with Section 7360) is added to Chapter 2 of Part 2 of Division 6 of the Fish and Game Code, to read:

Article 4. Striped Bass

7360. In addition to a valid California sportfishing license and any applicable license stamp issued pursuant to Section 7149, a person taking striped bass shall have permanently affixed to his or her license a striped bass stamp that may be obtained from the department or an authorized agent of the department for a fee of three dollars and fifty cents ($3.50).

7361. Fees received by the department pursuant to Section 7360 shall be deposited in a separate account in the Fish and Game Preservation Fund. The department shall expend the funds in that account solely to produce striped bass, increase the number of striped bass, and to help restore aquatic habitat for striped bass, consistent with the striped bass policy goals established by the commission, and to fund any other recommendations made by the Striped Bass Stamp Fund Advisory Committee appointed pursuant to Section 7362, except that 15 percent of the funds derived pursuant to this article shall be used for projects that benefit salmon habitat. No funds in this account shall be used in lieu of other funds appropriated by any statute in existence on January 1, 1998, for striped bass production and restoration.

7362. (a) The director shall appoint a Striped Bass Stamp Fund Advisory Committee, consisting of nine members. The members of the committee shall be selected from names of persons submitted by striped bass anglers and associations representing striped bass anglers of this state and shall serve at the discretion of the director. The director shall appoint persons to the committee who possess experience in subjects with specific value to the committee and shall attempt to balance the perspective of different groups of persons.

(b) The advisory committee shall annually recommend to the department projects and budgets for the expenditure of revenue received pursuant to Section 7360. The department shall give full and complete consideration to the committee's recommendations. In

submitting recommendations for the Governor's Budget, the department may recommend programs for funding that are not contained in the committee's recommendation, except that all revenue raised pursuant to Section 7360 shall be spent in accordance with Section 7361. The department shall submit to the committee an annual accounting of funds derived from striped bass stamps, including the number of stamps sold, funds generated and expended, and a status report of programs funded pursuant to this article.

7363. This article shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 2. 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 399

An act to amend Section 8670.35 of the Government Code, relating to oil spills.

[Approved by Governor August 29, 1997. Filed with Secretary of State August 29, 1997.]

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

SECTION 1. Section 8670.35 of the Government Code is amended to read:

8670.35. (a) Prior to January 1, 1992, the administrator, taking into consideration the state oil spill contingency plan, shall draft guidelines, standards, and formats regarding the adequacy of oil spill contingency plan elements of area plans required pursuant to Section 25503 of the Health and Safety Code. In developing the guidelines, the administrator shall consult with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee.

(b) (1) Any local government with jurisdiction over, or directly adjacent to, marine waters may apply for a grant to complete, update, or revise an oil spill contingency plan element.

For purposes of this subdivision, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento, as defined in Section 8670.28.

(c) Each contingency plan element established under this section shall include provisions for training fire and police personnel in oil spill response and cleanup equipment use and operations.

(d) Each contingency plan element prepared under this section shall be consistent with the local government's local coastal program as certified under Section 30500 of the Public Resources Code, the state oil spill contingency plan, and the National Contingency Plan.

(e) The administrator shall review and approve each contingency plan element established pursuant to this section. If, upon review, the administrator determines that the contingency plan element is inadequate, the administrator shall return it to the agency which prepared it, specifying the nature and extent of the inadequacies, and, if practicable, suggesting modifications. The local government agency shall submit a new or modified plan within 90 days from the date that the plan was returned, responding to the findings and incorporating any suggested modifications.

(f) The administrator shall review the preparedness of local governments to determine whether a program of grants for completing oil spill contingency plan elements is desirable and should be continued. If the administrator determines that local government preparedness should be improved, the administrator shall request the Legislature to appropriate funds from the Oil Spill Prevention and Administration Fund for the purposes of this section.

SEC. 2. This act shall become operative only if Assembly Bill No. 667 is enacted and takes effect.

CHAPTER 400

An act to amend Section 4935 of, and to add Section 730 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor August 29, 1997. Filed with Secretary of State August 29, 1997.]

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

SECTION 1. Section 730 is added to the Business and Professions Code, to read:

730. (a) It is unprofessional conduct, and a crime as provided in Section 4935, for a physician and surgeon, osteopathic physician, dentist, or podiatrist to direct or supervise the performance of acupuncture involving the application of a needle to the body of a human being by a person licensed under this division who is not

licensed pursuant to the Acupuncture Licensure Act, Chapter 12 (commencing with Section 4925).

(b) It is unprofessional conduct, and a crime as provided in Section 4935, for a person licensed under this division who is not licensed pursuant to the Acupuncture Licensure Act, Chapter 12 (commencing with Section 4925), to perform acupuncture involving the application of a needle to the body of a human being at the direction or under the supervision of a physician and surgeon, osteopathic physician, dentist, or podiatrist.

SEC. 2. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) Any person who practices acupuncture or holds himself or herself out as practicing or engaging in the practice of acupuncture, unless he or she possesses an acupuncturist's license, is guilty of a misdemeanor.

(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words "acupuncture," "acupuncturist," "certified acupuncturist," "licensed acupuncturist," "oriental medicine," or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, or an expert in the field of acupuncture, oriental medicine, or Chinese medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training when he or she:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or

(2) Is a graduate of a school of acupuncture approved by the committee and participating in a postgraduate review course that does not exceed three months in duration at a school approved by the board.

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 401

An act to amend Sections 146.5, 6980.23, 6980.33, 6980.48, 7504.7, 7506.9, 7506.10, 7507.10, 7507.13, 7529, 7582.13, 7583.20, 7583.32, 7593.11, 7596, 7596.7, 7598.14, 7598.17, 9810, 9830.5, 9832, 9832.5, 9847.5, 9849, 9851, 9853, 9855.2, 9855.3, 9855.9, 9860, 9862.5, 9863, 9873, 19008, 19010, 19080, 19123.4, and 19208 of, to amend, repeal, and add Sections 6980.79, 7511, 7570, 7588, and 7599.70 of, to add Section 9814.5 to, to repeal Section 9854 of, to add and repeal Section 9812.5 of, and to repeal and add Sections 7558 and 7586 of, the Business and Professions Code, and to amend Sections 1791 and 1794.4 of the Civil Code, relating to consumer affairs, and making an appropriation therefor.

[Approved by Governor August 29, 1997. Filed with Secretary of State August 29, 1997.]

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

SECTION 1. Section 146.5 of the Business and Professions Code is amended to read:

146.5. (a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when either of the following occur:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivision (c) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

(1) Section 2630.
(2) Section 2903.
(3) Sections 3760 and 3761.
(4) Section 4825.
(5) Section 4980.
(6) Section 4996.
(7) Section 5536.
(8) Section 6704.
(9) Section 6980.10.
(10) Section 7317.
(11) Section 7502 or 7592.
(12) Section 7617 or 7641.
(13) Subdivision (a) of Section 7872.
(14) Section 8016.
(15) Section 8505.
(16) Section 8725.
(17) Section 9681.
(18) Section 9840.
(19) Section 9855.1.
(20) Section 9884.6.
(21) Subdivision (c) of Section 9891.24.
(22) Section 19049.

(d) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation that was the basis for his or her conviction.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 1.2. Section 6980.23 of the Business and Professions Code is amended to read:

6980.23. The chief shall issue a pocket identification card to the owner, partners, and officers. The chief shall determine the form and content of the card. The pocket card shall be composed of durable material and may incorporate technologically advanced security features. The bureau may charge a fee sufficient to reimburse the department for costs for furnishing the pocket card. The fee charged may not exceed the actual cost for system development, maintenance, and processing necessary to provide the service, and may not exceed six dollars ($6).

SEC. 1.4. Section 6980.33 of the Business and Professions Code is amended to read:

6980.33. A licensee shall carry a valid pocket identification card, issued by the bureau pursuant to Section 6980.23, at all times the

licensee is engaged in the work of a locksmith, as defined in this chapter, whether on or off the premises of the licensee's place of business. Every person, while engaged in any activity for which licensure is required, shall display his or her valid pocket card as provided by regulation.

SEC. 1.6. Section 6980.48 of the Business and Professions Code is amended to read:

6980.48. (a) Upon determining that the applicant is qualified for registration pursuant to this chapter, the bureau shall issue a pocket registration card to the employee. The applicant may request to be issued an enhanced pocket card that shall be composed of durable material and may incorporate technologically advanced security features. The bureau may charge a fee sufficient to reimburse the department for costs for furnishing the enhanced pocket card. The fee charged may not exceed the actual cost for system development, maintenance, and processing necessary to provide the service, and may not exceed six dollars ($6). If the applicant does not request an enhanced card, the department shall issue a standard card at no cost to the applicant.

(b) The registrant shall carry a valid registration card issued by the bureau under this section at all times the registrant is engaged in the work of a locksmith whether on or off the premises of the licensee's place of business. Every person, while engaged in any activity for which licensure is required, shall display his or her valid pocket card as provided by regulation.

SEC. 2. Section 6980.79 of the Business and Professions Code is amended to read:

6980.79. The fees prescribed by this chapter are those fixed in the following schedule:

(a) A locksmith license application fee of thirty dollars ($30).

(b) An original license and renewal fee for a locksmith license of forty-five dollars ($45).

(c) A branch office registration fee and branch office renewal fee of thirty-five dollars ($35).

(d) Notwithstanding Section 163.5, the reinstatement fee as required by Section 6980.28 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(e) An initial registration fee for an employee of twenty dollars ($20).

(f) A registration renewal fee for an employee performing the services of a locksmith of twenty dollars ($20).

(g) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(h) All applicants seeking a license pursuant to this chapter shall also remit to the bureau the fingerprint fee that is charged to the bureau by the Department of Justice.

(i) The fee for a "Certificate of Licensure" of twenty dollars ($20).

(j) A delinquency fee is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

This section is repealed July 1, 1998.

SEC. 3. Section 6980.79 is added to the Business and Professions Code, to read:

6980.79. The fees prescribed by this chapter are those fixed in the following schedule:

(a) A locksmith license application fee may not exceed thirty dollars ($30).

(b) An original license and renewal fee for a locksmith license may not exceed forty-five dollars ($45).

(c) A branch office registration fee and branch office renewal fee may not exceed thirty-five dollars ($35).

(d) Notwithstanding Section 163.5, the reinstatement fee as required by Section 6980.28 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(e) An initial registration fee for an employee may not exceed twenty dollars ($20).

(f) A registration renewal fee for an employee performing the services of a locksmith may not exceed twenty dollars ($20).

(g) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(h) All applicants seeking a license pursuant to this chapter shall also remit to the bureau the fingerprint fee that is charged to the bureau by the Department of Justice.

(i) The fee for a "Certificate of Licensure" may not exceed twenty dollars ($20).

(j) A delinquency fee is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

This section shall become operative July 1, 1998. Notwithstanding the operative date of this section, before, on, or after July 1, 1998, the bureau may adopt regulations specifying the fees authorized by this section. If the bureau does not have regulations in effect that delineate the specific fees authorized by this section by July 1, 1998, the schedule of fees in effect as of June 30, 1998, shall remain operative until the bureau adopts regulations specifying the fees.

SEC. 4. Section 7504.7 of the Business and Professions Code is amended to read:

7504.7. (a) Except as provided in this section, every qualification certificate issued or renewed under this chapter on or after July 1, 1998, is subject to the same renewal provisions that apply to a repossession agency license as set forth in Sections 7503.10, 7503.11, 7503.12, 7503.13, and 7503.14.

(b) An initial qualification certificate shall expire one year following the date of issuance, unless renewed as provided in this chapter.

(c) A renewal qualification certificate shall expire two years following the date of renewal, unless renewed as provided in this chapter.

SEC. 5. Section 7506.9 of the Business and Professions Code is amended to read:

7506.9. (a) Upon the issuance of the initial registration, reregistration or renewal, the chief shall issue to the registrant a suitable pocket identification card. At the request of the registrant, the identification card may include a photograph of the registrant. The photograph shall be of a size prescribed by the bureau. The card shall contain the name of the licensee with whom the registrant is employed. The applicant may request to be issued an enhanced pocket card that shall be composed of durable material and may incorporate technologically advanced security features. The bureau may charge a fee sufficient to reimburse the department for costs for furnishing the enhanced pocket card. The fee charged may not exceed the actual cost for system development, maintenance, and processing necessary to provide the service, and may not exceed six dollars ($6). If the applicant does not request an enhanced card, the department shall issue a standard card at no cost to the applicant.

(b) Until the registration certificate is issued or denied, a person may be assigned to work with a temporary registration on a secure form prescribed by the chief, and issued by the qualified certificate holder, that has been embossed by the bureau with the state seal for a period not to exceed 120 days from the date employment commenced, provided the person signs a declaration under penalty of perjury that he or she has not been convicted of a felony or committed any other act constituting grounds for denial of a registration pursuant to Section 7506.8 (unless he or she declares that the conviction of a felony or the commission of a specified act or acts occurred prior to the issuance of a registration by the chief and the conduct was not the cause of any subsequent suspension or termination of a registration), and that he or she has read and understands the provisions of this chapter.

(c) The chief shall issue an additional temporary registration for not less than 60 days nor more than 120 days, if the chief determines that the investigation of the applicant will take longer to complete than the initial temporary registration time period.

(d) No person shall perform the duties of a registrant for a licensee unless the person has in his or her possession a valid repossessor registration card or evidence of a valid temporary registration or registration renewal as described in subdivision (b) of this section or subdivision (c) of Section 7506.10. Every person, while engaged in any activity for which licensure is required, shall display his or her valid pocket card as provided by regulation.

SEC. 6. Section 7506.10 of the Business and Professions Code is amended to read:

7506.10. (a) Every initial registration shall expire one year following the date of issuance, unless renewed as provided in this section, except for those registrations issued on or after January 1, 1984, which shall expire on December 31, 1985, and every year thereafter, unless renewed as provided in this section. A renewal registration shall expire two years following the date of renewal, unless renewed as provided in this section.

(b) At least 60 days prior to the expiration, the bureau shall mail a renewal form to the registrant at the licensee's place of business. A registrant who desires to renew his or her registration shall forward to the bureau for each registration the properly completed renewal form obtained from the bureau, with the renewal fee prescribed by this chapter, for renewal of his or her registration. Until the registration renewal certificate is issued, a registrant may continue to work with a temporary registration renewal certificate on a secure form prescribed by the chief and issued by the qualified certificate holder that has been embossed by the bureau with the state seal for a period not to exceed 120 days from the date of expiration of the registration.

(c) A licensee shall provide to his or her registrants information regarding procedures for renewal of registration.

(d) A registration that is not renewed within 60 days after its expiration may not be renewed. If the registration is renewed within 60 days after its expiration, the registrant, as a condition precedent to renewal, shall pay the renewal fee and also pay the delinquency fee prescribed in this chapter. Registrants working with expired registrations shall pay all accrued fees and penalties prior to renewal or reregistration.

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars ($25).

(f) Upon renewal, evidence of renewal, as the director may prescribe, shall be issued to the registrant. If evidence of renewal has not been delivered to the registrant prior to the date of expiration, the registrant may present evidence of renewal to substantiate continued registration for a period not to exceed 60 days after the date of expiration or a temporary registration renewal certificate as described in subdivision (b).

(g) A registration shall not be renewed until any and all fines assessed pursuant to this chapter and not resolved in accordance with this chapter have been paid.

SEC. 7. Section 7507.10 of the Business and Professions Code is amended to read:

7507.10. Each licensee shall serve a debtor with a notice of seizure as soon as possible after the recovery of collateral and not later than 48 hours, except that if the 48-hour period encompasses a Saturday, Sunday, or postal holiday, the notice of seizure shall be provided not later than 72 hours or, if the 48-hour period encompasses a Saturday or Sunday and a postal holiday, the notice of seizure shall be provided

not later than 96 hours, after the repossession of collateral. The notice shall include all of the following:

(a) The name, address, and telephone number of the representative of the legal owner to be contacted regarding the repossession.

(b) The name, address, and telephone number of the representative of the repossession agency to be contacted regarding the repossession.

(c) A statement printed on the notice containing the following: "Repossessors are regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, CA 95814. Repossessors are required to provide you, not later than 48 hours after the recovery of collateral, with an inventory of personal effects or other personal property recovered during repossession unless the 48-hour period encompasses a Saturday, Sunday, or a postal holiday, then the inventory shall be provided no later than 96 hours after the recovery of collateral."

(d) A disclosure that "Damage to a vehicle during or subsequent to a repossession and only while the vehicle is in possession of the repossession agency and which is caused by the repossession agency is the liability of the repossession agency. A mechanical or tire failure shall not be the responsibility of the repossession agency unless the failure is due to the negligence of the repossession agency."

(e) If applicable, a disclosure that environmental, Olympic, special interest, or other license plates issued pursuant to Article 8 (commencing with Section 5000), Article 8.4 (commencing with Section 5060) or Article 8.5 (commencing with Section 5100) of Chapter 1 of Division 3 of the Vehicle Code that remain the personal effects of the debtor will be removed from the collateral and inventoried, and that if the plates are not claimed by the debtor within 60 days, they will be destroyed.

The notice may be given by regular mail addressed to the last known address of the debtor or by personal service at the option of the repossession agency.

SEC. 8. Section 7507.13 of the Business and Professions Code is amended to read:

7507.13. (a) A licensed repossession agency is not liable for the act or omission of a legal owner, debtor, lienholder, lessor, or lessee in making an assignment to it or for accepting an assignment from any legal owner, debtor, lienholder, lessor, or lessee and is entitled to indemnity from the legal owner, debtor, lienholder, lessor, or lessee for any loss, damage, cost, or expense, including court costs and attorney's fees, that it may reasonably incur as a result thereof. Nothing in this subdivision limits the liability of any person for his or her tortious conduct.

(b) The legal owner, debtor, lienholder, lessor, or lessee is not liable for any act or omission by a licensed repossession agency in carrying out an assignment and is entitled to indemnity from the

repossession agency for any loss, damage, cost, or expense, including court costs and attorney's fees, that the legal owner, debtor, lienholder, lessor, or lessee may reasonably incur as a result thereof. Nothing in this subdivision limits the liability of any person for his or her tortious conduct.

(c) The legal owner, debtor, lienholder, lessor, or lessee is not guilty of a violation of Section 7502.1 or 7502.2 if, at the time of the assignment, the party making the assignment has in its possession a copy of the repossessor's current, unexpired repossession agency license, and a copy of the current, unexpired repossession agency's qualified manager's certificate, and does not have actual knowledge of any order of suspension or revocation of the license or certificate.

(d) Neither a licensed repossession agency nor a legal owner, debtor, lienholder, lessor or lessee may, by any means, direct or indirect, express or implied, instruct or attempt to coerce the other to violate any law, regulation, or rule regarding the recovery of any collateral, including, but not limited to, the provisions of this chapter or Section 9503 of the Commercial Code.

SEC. 9. Section 7511 of the Business and Professions Code, as amended by Section 35 of Chapter 505 of the Statutes of 1995, is amended to read:

7511. Effective January 1, 1995, the bureau shall establish and assess fees and penalties for licensure and registration as displayed in this section. The fees prescribed by this chapter are as follows:

(a) The application fee for an original repossession agency license is eight hundred twenty-five dollars ($825).

(b) The application fee for an original qualification certificate is three hundred twenty-five dollars ($325).

(c) The renewal fee for a repossession agency license is four hundred seventy-five dollars ($475) annually.

(d) The renewal fee for a license as a qualified certificate holder is two hundred twenty-five dollars ($225) annually.

(e) Notwithstanding Section 163.5, the reinstatement fee for a repossession agency license required pursuant to Sections 7503.11 and 7505.3 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(f) Notwithstanding Section 163.5, the reinstatement fee for a license as a qualified certificate holder required pursuant to Sections 7504.7 and 7503.11 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(g) A fee for reexamination of an applicant for a qualified manager is thirty dollars ($30).

(h) An initial registrant registration fee is seventy-five dollars ($75), a registrant reregistration fee is thirty dollars ($30), and a repossessor employee annual renewal fee is thirty dollars ($30) per registration. Notwithstanding Section 163.5 and this subdivision, the reregistration fee for a registrant whose registration expired more

than one year prior to the filing of the application for reregistration shall be seventy-five dollars ($75).

(i) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars ($25).

(j) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(k) The director shall furnish one copy of any issue or edition of the licensing law and rules and regulations to any applicant or licensee without charge. The director shall charge and collect a fee of ten dollars ($10) plus sales tax for each additional copy which may be furnished on request to any applicant or licensee, and for each copy furnished on request to any other person.

(*l*) The processing fee for the assignment of a repossession agency license pursuant to Section 7503.9 is one hundred twenty-five dollars ($125).

All fees, except any sales tax, received pursuant to this chapter shall be deposited in the Private Security Services Fund.

This section shall become operative January 1, 1995, and shall remain in effect only until July 1, 1998, and as of that date is repealed.

SEC. 9.5. Section 7511 of the Business and Professions Code, as amended by Section 36 of Chapter 505 of the Statutes of 1995, is repealed.

SEC. 10. Section 7511 is added to the Business and Professions Code, to read:

7511. Effective July 1, 1998, the bureau shall establish and assess fees and penalties for licensure and registration as displayed in this section. The fees prescribed by this chapter are as follows:

(a) The application fee for an original repossession agency license may not exceed eight hundred twenty-five dollars ($825).

(b) The application fee for an original qualification certificate may not exceed three hundred twenty-five dollars ($325).

(c) The renewal fee for a repossession agency license may not exceed four hundred seventy-five dollars ($475) annually.

(d) The renewal fee for a license as a qualified certificate holder may not exceed four hundred fifty dollars ($450) biennially.

(e) Notwithstanding Section 163.5, the reinstatement fee for a repossession agency license required pursuant to Sections 7503.11 and 7505.3 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(f) Notwithstanding Section 163.5, the reinstatement fee for a license as a qualified certificate holder required pursuant to Sections 7504.7 and 7503.11 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(g) A fee for reexamination of an applicant for a qualified manager may not exceed thirty dollars ($30).

(h) An initial registrant registration fee may not exceed seventy-five dollars ($75), a registrant reregistration fee may not exceed thirty dollars ($30), and a repossessor employee biennial

renewal fee may not exceed sixty dollars ($60) per registration. Notwithstanding Section 163.5 and this subdivision, the reregistration fee for a registrant whose registration expired more than one year prior to the filing of the application for reregistration may not exceed seventy-five dollars ($75).

(i) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars ($25).

(j) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(k) The director shall furnish one copy of any issue or edition of the licensing law and rules and regulations to any applicant or licensee without charge. The director shall charge and collect a fee not to exceed ten dollars ($10) plus sales tax for each additional copy which may be furnished on request to any applicant or licensee, and for each copy furnished on request to any other person.

(*l*) The processing fee for the assignment of a repossession agency license pursuant to Section 7503.9 may not exceed one hundred twenty-five dollars ($125).

This section shall become operative July 1, 1998. Notwithstanding the operative date of this section, before, on, or after July 1, 1998, the bureau may adopt regulations specifying the fees authorized by this section. If the bureau does not have regulations in effect that delineate the specific fees authorized by this section by July 1, 1998, the schedule of fees in effect as of June 30, 1998, shall remain operative until the bureau adopts regulations specifying the fees.

SEC. 11. Section 7529 of the Business and Professions Code is amended to read:

7529. Upon the issuance of a license, a pocket card of the size, design, and content as may be determined by the director shall be issued to each licensee, if an individual, or if the licensee is a person other than an individual, to its manager and to each of its officers and partners. The pocket card is evidence that the licensee is licensed pursuant to this chapter. The card shall contain the signature of the licensee, signature of the chief, and a photograph of the licensee, or bearer of the card, if the licensee is other than an individual. The card shall clearly state that the person is licensed as a private investigator or is the manager or officer of the licensee. The applicant may request to be issued an enhanced pocket card that shall be composed of a durable material and may incorporate technologically advanced security features. The bureau may charge a fee sufficient to reimburse the department's costs for furnishing the enhanced pocket card. The fee charged may not exceed the actual costs for system development, maintenance, and processing necessary to provide this service, and may not exceed six dollars ($6). If the applicant does not request an enhanced card, the department shall issue a standard card at no cost to the applicant. When a person to whom a card is issued terminates his or her position, office, or association with the licensee, the card shall be surrendered to the licensee and within five days

thereafter shall be mailed or delivered by the licensee to the bureau for cancellation. Every person, while engaged in any activity for which licensure is required, shall display his or her valid pocket card as provided by regulation.

SEC. 12. Section 7558 of the Business and Professions Code is repealed.

SEC. 13. Section 7558 is added to the Business and Professions Code, to read:

7558. A private investigator license, branch office certificate, and pocket card issued under this chapter expires two years following the date of issuance or on the assigned renewal date. Every private investigator issued a license under this chapter that expires on or after January 1, 1997, and who is also issued or renews a firearms qualification card on or after January 1, 1997, shall be placed on a cyclical renewal so that the private investigator license or pocket card expires on the expiration date of the firearms qualification card. Notwithstanding any other provision of law, the bureau is authorized to extend or shorten the first term of licensure following January 1, 1997, and to prorate the required license fee in order to implement this cyclical renewal.

SEC. 14. The first Section 7570 of the Business and Professions Code, as added by Section 4 of Chapter 1285 of the Statutes of 1994, is amended to read:

7570. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license is fifty dollars ($50).

(b) The application fee for an original branch office certificate is thirty dollars ($30).

(c) The fee for an original license for a private investigator is one hundred seventy-five dollars ($175).

(d) The renewal fee is as follows:

(1) For a license as a private investigator, one hundred twenty-five dollars ($125).

(2) For a combination license as a private investigator and private patrol operator under Chapter 11.5 (commencing with Section 7580), AC or DC prefix, six hundred dollars ($600).

(3) For a branch office certificate for a private investigator, thirty dollars ($30), and for a combination private investigator and private patrol operator under Chapter 11.5 (commencing with Section 7580), forty dollars ($40).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager is fifteen dollars ($15).

(h) This section shall remain in effect only until July 1, 1998, and as of that date is repealed.

SEC. 15. The second Section 7570 of the Business and Professions Code, as amended by Section 4 of Chapter 1285 of the Statutes of 1994, is repealed.

SEC. 16. Section 7570 is added to the Business and Professions Code, to read:

7570. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license may not exceed fifty dollars ($50).

(b) The application fee for an original branch office certificate may not exceed thirty dollars ($30).

(c) The fee for an original license for a private investigator may not exceed one hundred seventy-five dollars ($175).

(d) The renewal fee is as follows:

(1) For a license as a private investigator, the fee may not exceed one hundred twenty-five dollars ($125).

(2) For a combination license as a private investigator and private patrol operator under Chapter 11.5 (commencing with Section 7580), AC or DC prefix, the fee may not exceed six hundred dollars ($600).

(3) For a branch office certificate for a private investigator, the fee may not exceed thirty dollars ($30), and for a combination private investigator and private patrol operator under Chapter 11.5 (commencing with Section 7580), the fee may not exceed forty dollars ($40).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager may not exceed fifteen dollars ($15).

This section shall become operative July 1, 1998. Notwithstanding the operative date of this section, before, on, or after July 1, 1998, the bureau may adopt regulations specifying the fees authorized by this section. If the bureau does not have regulations in effect that delineate the specific fees authorized by this section by July 1, 1998, the schedule of fees in effect as of June 30, 1998, shall remain operative until the bureau adopts regulations specifying the fees.

SEC. 17. Section 7582.13 of the Business and Professions Code is amended to read:

7582.13. Upon the issuance of a license, a pocket card of the size, design, and content determined by the director shall be issued to each licensee, if an individual, or if the licensee is a person other than an individual, to its manager and to each of its officers and partners. The pocket card is evidence that the licensee is licensed pursuant to this chapter. The card shall contain the signature of the licensee, signature of the chief, and a photograph of the licensee, or bearer of the card, if the licensee is other than an individual. The card shall clearly state that the person is licensed as a private patrol operator

or is the manager or officer of the licensee. The applicant may request to be issued an enhanced pocket card that shall be composed of a durable material and may incorporate technologically advanced security features. The bureau may charge a fee sufficient to reimburse the department's costs for furnishing the enhanced pocket card. The fee charged may not exceed the actual costs for system development, maintenance, and processing necessary to provide this service, and may not exceed six dollars ($6). If the applicant does not request an enhanced card, the department shall issue a standard card at no cost. When a person to whom a card is issued terminates his or her position, office, or association with the licensee, the card shall be surrendered to the licensee and within five days thereafter shall be mailed or delivered by the licensee to the bureau for cancellation. Every person, while engaged in any activity for which registration is required, shall display their valid pocket card as provided by regulation.

SEC. 18. Section 7583.20 of the Business and Professions Code is amended to read:

7583.20. (a) A registration issued under this chapter expires two years following the date of issuance or on the assigned renewal date. Every security guard issued a registration under this chapter that expires on or after January 1, 1997, and who is also issued or renews a firearms qualification card on or after January 1, 1997, shall be placed on a cyclical renewal so that the registration expires on the expiration date of the firearms qualification card. Notwithstanding any other provision of law, the bureau is authorized to extend or shorten the first term of registration following January 1, 1997, and to prorate the required registration fee in order to implement this cyclical renewal. At least 60 days prior to the expiration, a registrant seeking to renew a guard registration shall forward to the bureau a completed registration renewal application and the renewal fee. The renewal application shall be on a form prescribed by the director, dated and signed by the applicant, certifying under penalty of perjury that the information in the application is true and correct.

(b) The licensee shall provide to any employee information regarding procedures for renewal or registration.

(c) In the event a registrant fails to request a renewal of his or her registration as provided in this chapter, the registration shall expire as indicated on the registration. If the registration is renewed within 60 days after its expiration, the registrant, as a condition precedent to renewal, shall pay the renewal fee and the delinquency fee.

(d) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars ($25).

(e) If the renewed registration card has not been delivered to the registrant prior to the expiration of the prior registration, the registrant may present evidence of renewal to substantiate continued registration for a period not to exceed 90 days after the date of expiration.

(f) A registration may not be renewed or reinstated until all fines assessed pursuant to Section 7587.7 and not resolved in accordance with the provisions of that section have been paid.

SEC. 19. Section 7583.32 of the Business and Professions Code is amended to read:

7583.32. (a) A firearms qualification card expires two years from the date of issuance, if not renewed. A person who wishes to renew a firearms qualification card shall file an application for renewal at least 60 days prior to the card's expiration. A person whose card has expired shall not carry a firearm until he or she has been issued a renewal card by the bureau.

(b) The bureau shall not renew a firearms qualification card unless all of the following conditions are satisfied:

(1) The cardholder has filed with the bureau a completed application for renewal of a firearms qualification card, on a form prescribed by the director, dated and signed by the applicant under penalty of perjury certifying that the information on the application is true and correct.

(2) The applicant has requalified on the range and has successfully passed a written examination based on course content as specified in the firearms training manual approved by the department and taught at a training facility approved by the bureau.

(3) The application is accompanied by a firearms requalification fee as prescribed in this chapter.

(4) The applicant has produced evidence to the firearm training facility, either upon receiving his or her original qualification card or upon filing for renewal of that card, that he or she is a citizen of the United States or has permanent legal alien status in the United States. Evidence of citizenship or permanent legal alien status is that deemed sufficient by the bureau to ensure compliance with federal laws prohibiting possession of firearms by persons unlawfully in the United States and may include, but not be limited to, Department of Justice, Immigration and Naturalization Service Form I-151 or I-551, Alien Registration Receipt Card, naturalization documents, or birth certificates evidencing lawful residence or status in the United States.

(c) An expired firearms qualification card may not be renewed. A person with an expired registration is required to apply for a new firearms qualification in the manner required of persons not previously registered. A person whose card has expired shall not carry a firearm until he or she has been issued a new firearms qualification card by the bureau.

SEC. 20. Section 7586 of the Business and Professions Code is repealed.

SEC. 21. Section 7586 is added to the Business and Professions Code, to read:

7586. A private patrol operator license, branch office certificate, and pocket card issued under this chapter expires two years following the date of issuance or on the assigned renewal date. Every private

patrol operator issued a license under this chapter that expires on or after January 1, 1997, and who is also issued or renews a firearms qualification card on or after January 1, 1997, shall be placed on a cyclical renewal so that the license expires on the expiration date of the firearms qualification card. Notwithstanding any other provision of law, the bureau is authorized to extend or shorten the first term of licensure following January 1, 1997, and to prorate the required license fee in order to implement this cyclical renewal.

SEC. 22. Section 7588 of the Business and Professions Code, as amended by Section 2 of Chapter 734 of the Statutes of 1996, is amended to read:

7588. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license for a private patrol operator is two hundred dollars ($200).

(b) The application fee for an original branch office certificate for a private patrol operator is seventy-five dollars ($75).

(c) The fee for an original license for a private patrol operator is five hundred dollars ($500).

(d) The renewal fee is as follows:

(1) For a license as a private patrol operator, five hundred dollars ($500).

(2) For a combination license as a private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, AC or DC prefix, six hundred dollars ($600).

(3) For a branch office certificate for a combination private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, forty dollars ($40), and for a private patrol operator, seventy-five dollars ($75).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager is twenty dollars ($20).

(h) Registration fees pursuant to this chapter are as follows:

(1) A registration fee for a security guard is twenty-five dollars ($25).

(2) A security guard registration renewal fee of twenty-five dollars ($25).

(i) Fees to carry out other provisions of this chapter are as follows:

(1) A firearms qualification fee of eighty dollars ($80).

(2) A firearms requalification fee of sixty dollars ($60).

(3) An initial baton certification fee of fifty dollars ($50).

(4) An application fee and renewal fee for certification as a firearms training facility or a baton training facility of five hundred dollars ($500).

(5) An application fee and renewal fee for certification as a firearms training instructor or a baton training instructor of two hundred fifty dollars ($250).

(j) This section shall remain in effect only until July 1, 1998, and as of that date is repealed.

SEC. 23. Section 7588 of the Business and Professions Code, as amended by Section 3 of Chapter 734 of the Statutes of 1996, is repealed.

SEC. 24. Section 7588 is added to the Business and Professions Code, to read:

7588. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license for a private patrol operator may not exceed two hundred dollars ($200).

(b) The application fee for an original branch office certificate for a private patrol operator may not exceed seventy-five dollars ($75).

(c) The fee for an original license for a private patrol operator may not exceed five hundred dollars ($500).

(d) The renewal fee is as follows:

(1) For a license as a private patrol operator, the fee may not exceed five hundred dollars ($500).

(2) For a combination license as a private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, AC or DC prefix, the fee may not exceed six hundred dollars ($600).

(3) For a branch office certificate for a combination private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, the fee may not exceed forty dollars ($40), and for a private patrol operator, the fee may not exceed seventy-five dollars ($75).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager may not exceed twenty dollars ($20).

(h) Registration fees pursuant to this chapter are as follows:

(1) A registration fee for a security guard may not exceed twenty-five dollars ($25).

(2) A security guard registration renewal fee may not exceed twenty-five dollars ($25).

(i) Fees to carry out other provisions of this chapter are as follows:

(1) A firearms qualification fee may not exceed eighty dollars ($80).

(2) A firearms requalification fee may not exceed sixty dollars ($60).

(3) An initial baton certification fee may not exceed fifty dollars ($50).

(4) An application fee and renewal fee for certification as a firearms training facility or a baton training facility may not exceed five hundred dollars ($500).

(5) An application fee and renewal fee for certification as a firearms training instructor or a baton training instructor may not exceed two hundred fifty dollars ($250).

This section shall become operative July 1, 1998. Notwithstanding the operative date of this section, before, on, or after July 1, 1998, the bureau may adopt regulations specifying the fees authorized by this section. If the bureau does not have regulations in effect that delineate the specific fees authorized by this section by July 1, 1998, the schedule of fees in effect as of June 30, 1998, shall remain operative until the bureau adopts regulations specifying the fees.

SEC. 25. Section 7593.11 of the Business and Professions Code is amended to read:

7593.11. An alarm company operator license issued under this chapter expires two years following the date of issuance or on the assigned renewal date. Every alarm company operator issued a license under this chapter that expires on or after January 1, 1997, and who is also issued or renews a firearms qualification card on or after January 1, 1997, shall be placed on a cyclical renewal so that the license expires on the expiration date of the firearms qualification card. Notwithstanding any other provision of law, the bureau is authorized to extend or shorten the first term of licensure following January 1, 1997, and to prorate the required license fee in order to implement this cyclical renewal. To renew an unexpired license or certificate, the licensee shall apply for renewal on a form prescribed by the director, pay all fines assessed pursuant to Section 7591.9 and not resolved in accordance with the provisions of that section, and pay the renewal fee. On renewal, evidence of renewal of the license or certificate that the director may prescribe shall be issued to the licensee. The bureau shall send to each licensee a notice of renewal at least 45 calendar days prior to the expiration of each license.

SEC. 26. Section 7596 of the Business and Professions Code is amended to read:

7596. Every person licensed, registered, or designated under this chapter, who in the course of his or her employment carries a firearm, shall complete a course of training in the carrying and use of firearms and shall receive a firearms qualification card prior to the carrying of such a firearm and shall complete a course in the exercise of the powers to arrest. A registration card issued by the bureau pursuant to Section 7598.14 may also serve as a firearms qualification card if so indicated on the face of the card.

SEC. 27. Section 7596.7 of the Business and Professions Code is amended to read:

7596.7. A firearms qualification card expires two years from the date of issuance, if not renewed. A person who wishes to renew a firearms qualification card shall file an application for renewal at least

60 days prior to the card's expiration. A person whose card has expired shall not carry a firearm until he or she has been issued a renewal card by the bureau.

The director shall not renew a firearms qualification card unless all of the following conditions exist:

(a) The cardholder has filed with the bureau a completed application for renewal of a firearms qualification card, on a form prescribed by the director, dated and signed by the applicant under penalty of perjury certifying that the information on the application is true and correct.

(b) The application is accompanied by a firearms requalification fee as prescribed in this chapter.

(c) The applicant has requalified on the range and has successfully passed a written examination based on course content as specified in the firearms training manual approved by the department and taught at a training facility approved by the bureau.

(d) During calendar year 1985, the applicant has produced evidence to the firearm training facility, either upon receiving his or her original qualification card or upon filing for renewal of that card, that he or she is a citizen of the United States or has permanent legal alien status in the United States. Such evidence of citizenship or permanent legal alien status is that deemed sufficient by the bureau to ensure compliance with federal laws prohibiting possession of firearms by persons unlawfully in the United States and may include, but not be limited to, Department of Justice, Immigration and Naturalization Service Form I-151 or I-551, Alien Registration Receipt Card, naturalization documents, or birth certificates evidencing lawful residence or status in the United States.

(e) An expired firearms qualification card may not be renewed. A person with an expired firearms qualification card is required to apply for a new card in the manner required of persons not previously registered. A person whose card has expired shall not carry a firearm until he or she has been issued a new firearms qualification card by the bureau.

SEC. 28. Section 7598.14 of the Business and Professions Code is amended to read:

7598.14. Upon approval of an application for registration, the chief shall cause to be issued to the applicant, at his or her last known address, a registration card in a form approved by the director. A photo identification card shall be issued upon written request of the applicant, submission of two recent photographs of the applicant, and payment of the fee. The applicant may request to be issued an enhanced pocket card that shall be composed of a durable material and may incorporate technologically advanced security features. The bureau may charge a fee sufficient to reimburse the department's costs for furnishing the enhanced license. The fee charged may not exceed the actual costs for system development, maintenance, and processing necessary to provide this service, and may not exceed six

dollars ($6). If the applicant does not request an enhanced card, the department shall issue a standard card at no cost to the applicant. In the event of the loss or destruction of the card, the cardholder may apply to the bureau for a certified replacement of the card, stating the circumstances surrounding the loss, and pay a ten dollar ($10) certification fee, whereupon the bureau shall issue a certified replacement of the card. Every person, while engaged in any activity for which registration is required, shall display their valid pocket card as provided by regulation.

SEC. 29. Section 7598.17 of the Business and Professions Code is amended to read:

7598.17. A registration issued under this chapter expires two years following the date of issuance or on the assigned renewal date. Every alarm agent issued a registration under this chapter that expires on or after January 1, 1997, and who is also issued or renews a firearms qualification card on or after January 1, 1997, shall be placed on a cyclical renewal so that the registration expires on the expiration date of the firearms qualification card. Notwithstanding any other provision of law, the bureau is authorized to extend or shorten the first term of registration following January 1, 1997, and to prorate the required registration fee in order to implement this cyclical renewal. At least 60 days prior to the expiration of a registration, a registrant who desires to renew his or her registration shall forward to the bureau a copy of his or her current registration card, along with the renewal fee as set forth in this chapter, to the bureau for renewal of his or her registration.

The licensee shall provide to any employee information regarding procedures for renewal of registration.

An expired registration may be renewed provided the registrant files a renewal application on a form prescribed by the director and the renewal and delinquency fees prescribed by this chapter are returned to the bureau within 60 days of the expiration date of the registration. A firearms permit is not valid while the registration is expired.

A registration not renewed within 60 days following its expiration may not be renewed thereafter. The holder of the expired registration may obtain a new registration only on compliance with all of the provisions of this chapter relating to the issuance of an original registration. The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars ($25).

The holder of an expired registration shall not engage in the activity for which a registration is required until the bureau issues a renewal registration.

If the renewed registration card has not been delivered to the registrant, prior to the date of expiration of the prior registration, the registrant may present evidence of renewal to substantiate

continued registration, for a period not to exceed 90 days after the date of expiration.

A registration may not be renewed or reinstated until all fines assessed pursuant to Section 7591.9 and not resolved in accordance with the provisions of that section have been paid.

A new registration shall be issued subject to payment of all fines assessed pursuant to Section 7591.9 and not resolved in accordance with the provisions of Section 7591.9 and payment of all applicable fees.

SEC. 30. Section 7599.70 of the Business and Professions Code, as amended by Section 5 of Chapter 734 of the Statutes of 1996, is amended to read:

7599.70. Effective January 1, 1995, the bureau shall establish and assess fees and penalties for licensure and registration as follows:

(a) A company license application fee of thirty-five dollars ($35).

(b) An original license fee for an alarm company operator license of two hundred eighty dollars ($280). A renewal fee for an alarm company operator license of three hundred thirty-five dollars ($335).

(c) A qualified manager application and examination fee of one hundred five dollars ($105).

(d) A renewal fee for a qualified manager of one hundred twenty dollars ($120).

(e) An original license fee and renewal fee for a branch office certificate of thirty-five dollars ($35).

(f) Notwithstanding Section 163.51, the reinstatement fee as required by Sections 7593.12 and 7598.17 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(g) A fee for reexamination of an applicant for a qualified manager of fourteen dollars ($14).

(h) An initial registration fee for an alarm agent of seventeen dollars ($17).

(i) A registration renewal fee for an alarm agent of seven dollars ($7).

(j) A firearms qualification fee of eighty dollars ($80) and a firearms requalification fee of sixty dollars ($60).

(k) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(*l*) The processing fee required pursuant to Sections 7593.7 and 7598.14 is the amount equal to the expenses incurred to provide a photo identification card.

(m) The fee for a "Certificate of Licensure" of fifty dollars ($50).

(n) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars ($25).

(o) This section shall become operative on January 1, 1995, and shall remain in effect only until July 1, 1998, and as of that date is repealed.

SEC. 31. Section 7599.70 of the Business and Professions Code, as amended by Section 6 of Chapter 734 of the Statutes of 1996, is repealed.

SEC. 32. Section 7599.70 is added to the Business and Professions Code, to read:

7599.70. Effective July 1, 1998, the bureau shall establish and assess fees and penalties for licensure and registration as follows:

(a) A company license application fee may not exceed thirty-five dollars ($35).

(b) An original license fee for an alarm company operator license may not exceed two hundred eighty dollars ($280). A renewal fee for an alarm company operator license may not exceed three hundred thirty-five dollars ($335).

(c) A qualified manager application and examination fee may not exceed one hundred five dollars ($105).

(d) A renewal fee for a qualified manager may not exceed one hundred twenty dollars ($120).

(e) An original license fee and renewal fee for a branch office certificate may not exceed thirty-five dollars ($35).

(f) Notwithstanding Section 163.51, the reinstatement fee as required by Sections 7593.12 and 7598.17 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(g) A fee for reexamination of an applicant for a qualified manager may not exceed fourteen dollars ($14).

(h) An initial registration fee for an alarm agent may not exceed seventeen dollars ($17).

(i) A registration renewal fee for an alarm agent may not exceed seven dollars ($7).

(j) A firearms qualification fee may not exceed eighty dollars ($80) and a firearms requalification fee not to exceed sixty dollars ($60).

(k) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(*l*) The processing fee required pursuant to Sections 7593.7 and 7598.14 is the amount equal to the expenses incurred to provide a photo identification card.

(m) The fee for a "Certificate of Licensure" may not exceed fifty dollars ($50).

(n) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars ($25).

This section shall become operative on July 1, 1998. Notwithstanding the operative date of this section, before, on, or after July 1, 1998, the bureau may adopt regulations specifying the fees authorized by this section. If the bureau does not have regulations in effect that delineate the specific fees authorized by this section by July 1, 1998, the schedule of fees in effect as of June 30, 1998, shall remain operative until the bureau adopts regulations specifying the fees.

SEC. 33. Section 9810 of the Business and Professions Code is amended to read:

9810. There is in the Department of Consumer Affairs a Bureau of Electronic and Appliance Repair, under the supervision and control of the director. The director shall administer and enforce the provisions of this chapter.

The Governor shall appoint, subject to confirmation by the Senate, a chief of the bureau at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

Every power granted to or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director or by the chief, subject to conditions and limitations that the director may prescribe.

Whenever the laws of this state refer to the Bureau of Electronic Repair Dealer Registration, the reference shall be construed to be to the Bureau of Electronic and Appliance Repair.

SEC. 34. Section 9812.5 is added to the Business and Professions Code, to read:

9812.5. The director shall gather evidence of violations of this chapter and of any regulation established hereunder by any service contractor, whether registered or not, and by any employee, partner, officer, or member of any service contractor. The director shall, on his or her own initiative, conduct spot check investigations of service contractors throughout the state on a continuous basis. This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 35. Section 9814.5 is added to the Business and Professions Code, to read:

9814.5. The director may establish and enforce reasonable regulations for the conduct of service contractors, and for the general enforcement of the various provisions of this chapter in the protection of the public. The director shall distribute to each registered service contractor copies of this chapter and of the regulations adopted under this chapter. Regulations shall be adopted, amended, or repealed in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 36. Section 9830.5 of the Business and Professions Code is amended to read:

9830.5. Each service contractor shall pay the fee required by this chapter for each place of business operated by him or her in this state and shall register with the bureau upon forms prescribed by the director. The forms shall contain sufficient information to identify the service contractor, including name, address, retail seller's permit number, if a permit is required under the Sales and Use Tax Law

(Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), a copy of the certificate of qualification as filed with the Secretary of State if the service contractor is a foreign corporation, and other identifying data to be prescribed by the bureau. If the business is to be carried on under a fictitious name, that fictitious name shall be stated. If the service contractor is a partnership, identifying data shall be stated for each partner. If the service contractor is a private company that does not file an annual report on Form 10-K with the Securities and Exchange Commission, data shall be included for each of the officers and directors of the company as well as for the individual in charge of each place of the service contractor's business in the State of California, subject to any regulations the director may adopt. If the service contractor is a publicly held corporation or a private company that files an annual report on Form 10-K with the Securities and Exchange Commission, it shall be sufficient for purposes of providing data for each of the officers and directors of the corporation or company to file with the director the most recent annual report on Form 10-K that is filed with the Securities and Exchange Commission.

A service contractor who does not operate a place of business in this state but who sells, issues, or administers service contracts in this state, shall hold a valid registration issued by the bureau and shall pay the registration fee required by this chapter as if he or she had a place of business in this state.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 37. Section 9832 of the Business and Professions Code is amended to read:

9832. (a) Registrations issued under this chapter shall expire no more than 12 months after the issue date. The expiration date of registrations shall be set by the director in a manner to best distribute renewal procedures throughout the year.

(b) To renew an unexpired registration, the service dealer shall, on or before the expiration date of the registration, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this chapter.

(c) To renew an expired registration, the service dealer shall apply for renewal on a form prescribed by the director, pay the renewal fee in effect on the last regular renewal date, and pay all accrued and unpaid delinquency and renewal fees.

(d) Renewal is effective on the date that the application is filed, the renewal fee is paid, and all delinquency fees are paid.

(e) For purposes of implementing the distribution of the renewal of registrations throughout the year, the director may extend by not more than six months, the date fixed by law for renewal of a registration, except that in that event any renewal fee that may be involved shall be prorated in a manner that no person shall be

required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

SEC. 38. Section 9832.5 of the Business and Professions Code is amended to read:

9832.5. (a) Registrations issued under this chapter shall expire no more than 12 months after the issue date. The expiration date of registrations shall be set by the director in a manner to best distribute renewal procedures throughout the year.

(b) To renew an unexpired registration, the service contractor shall, on or before the expiration date of the registration, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this chapter.

(c) To renew an expired registration, the service contractor shall apply for renewal on a form prescribed by the director, pay the renewal fee in effect on the last regular renewal date, and pay all accrued and unpaid delinquency and renewal fees.

(d) Renewal is effective on the date that the application is filed, the renewal fee is paid, and all delinquency fees are paid.

(e) For purposes of implementing the distribution of the renewal of registrations throughout the year, the director may extend, by not more than six months, the date fixed by law for renewal of a registration, except that, in that event, any renewal fee that may be involved shall be prorated in such a manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

(f) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 39. Section 9847.5 of the Business and Professions Code is amended to read:

9847.5. Each service contractor shall maintain those records as are required by the regulations adopted to carry out the provisions of this chapter for a period of at least three years. These records shall be open for reasonable inspection by the director or other law enforcement officials.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 40. Section 9849 of the Business and Professions Code, as amended by Section 4 of Chapter 1265 of the Statutes of 1993, is amended to read:

9849. The expiration of a valid registration shall not deprive the director of jurisdiction to proceed with any investigation or hearing on a cease and desist order against a service dealer or service contractor or to render a decision invalidating a registration temporarily or permanently.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 41. Section 9849 of the Business and Professions Code, as added by Section 4.5 of Chapter 1265 of the Statutes of 1993, is amended to read:

9849. The expiration of a valid registration shall not deprive the director of jurisdiction to proceed with any investigation or hearing on a cease and desist order against a service dealer or to render a decision invalidating a registration temporarily or permanently.

This section shall become operative on January 1, 2003.

SEC. 42. Section 9851 of the Business and Professions Code, as amended by Section 5 of Chapter 1265 of the Statutes of 1993, is amended to read:

9851. The superior court in and for the county wherein any person carries on, or attempts to carry on, business as a service dealer or service contractor in violation of the provisions of this chapter, or any regulation thereunder, shall, on application of the director, issue an injunction or other appropriate order restraining that conduct.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of an adequate remedy at law or irreparable injury.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 43. Section 9851 of the Business and Professions Code, as added by Section 5.5 of Chapter 1265 of the Statutes of 1993, is amended to read:

9851. The superior court in and for the county wherein any person carries on, or attempts to carry on, business as a service dealer in violation of the provisions of this chapter, or any regulation thereunder, shall, on application of the director, issue an injunction or other appropriate order restraining that conduct.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of an adequate remedy at law or irreparable injury.

This section shall become operative on January 1, 2003.

SEC. 44. Section 9853 of the Business and Professions Code, as amended by Section 6 of Chapter 1265 of the Statutes of 1993, is amended to read:

9853. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a service dealer or service contractor is deemed to be a conviction within the meaning of this

article. The director may order the registration temporarily or permanently invalidated, or may decline to issue a registration, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code, allowing that 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.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 45. Section 9853 of the Business and Professions Code, as added by Section 6.6 of Chapter 1265 of the Statutes of 1993, is amended to read:

9853. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a service dealer is deemed to be a conviction within the meaning of this article. The director may order the registration temporarily or permanently invalidated, or may decline to issue a registration, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that 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.

This section shall become operative on January 1, 2003.

SEC. 46. Section 9854 of the Business and Professions Code is repealed.

SEC. 47. Section 9855.2 of the Business and Professions Code is amended to read:

9855.2. (a) A service contract seller shall not issue, sell, or offer for sale a service contract unless he or she complies with one of the following requirements:

(1) Files with the director the most recent annual report on Form 10-K required by the Securities and Exchange Commission, reflecting a net worth greater than the sum of the deferred revenues from service contracts in force. If the service contractor is a foreign corporation that files a comparable audited financial statement with its home government or with the United States government, the director may deem that statement an acceptable substitute for Form 10-K.

(2) Obtains a service contract reimbursement insurance policy.

(3) Sells service contracts that are administered by a service contract administrator who has obtained a service contract

reimbursement insurance policy covering the seller's service contracts.

(4) Maintains and annually verifies to the director a funded account held in escrow equal to a minimum of 25 percent of the deferred revenues from the service contracts in force.

(b) A service contract administrator shall not administer service contracts sold in this state unless a service contract reimbursement insurance policy covering these service contracts has been obtained.

SEC. 48. Section 9855.3 of the Business and Professions Code is amended to read:

9855.3. (a) The service contract form to be issued by the service contractor shall be filed with the director by the service contractor prior to its use.

(b) Every service contract administrator shall file with its application for registration, and thereafter, with its application for registration renewal, a service contract reimbursement insurance policy.

(c) Every service contract seller shall file with his or her application for registration, and thereafter with his or her application for registration renewal, one of the following:

(1) The most recent annual report on Form 10-K required by the Securities and Exchange Commission, reflecting a net worth greater than the sum of the deferred revenues from service contracts in force. If the service contractor is a foreign corporation that files a comparable audited financial statement with its home government or with the United States government, the director may deem that statement an acceptable substitute for Form 10-K.

(2) A service contract reimbursement insurance policy.

(3) Evidence that his or her service contracts are administered by a service contract administrator who has obtained a service contract reimbursement insurance policy covering the seller's service contracts.

(4) Evidence of a funded account held in escrow equal to a minimum of 25 percent of the deferred revenues from the service contracts in force.

SEC. 49. Section 9855.9 of the Business and Professions Code is amended to read:

9855.9. This article shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 50. Section 9860 of the Business and Professions Code, as amended by Section 8 of Chapter 1265 of the Statutes of 1993, is amended to read:

9860. The director shall establish procedures for accepting complaints from the public against any service dealer or service contractor.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 51. Section 9860 of the Business and Professions Code, as added by Section 8.5 of Chapter 1265 of the Statutes of 1993, is amended to read:

9860. The director shall establish procedures for accepting complaints from the public against any service dealer.

This section shall become operative on January 1, 2003.

SEC. 52. Section 9862.5 of the Business and Professions Code is amended to read:

9862.5. If a complaint indicates a possible violation of this chapter or of the regulations adopted pursuant to this chapter, the director may advise the service contractor of the contents of the complaint and, if the service contractor is so advised, the director shall make a summary investigation of the facts after the service dealer has had reasonable opportunity to reply thereto.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 53. Section 9863 of the Business and Professions Code, as amended by Section 10 of Chapter 1265 of the Statutes of 1993, is amended to read:

9863. If, upon summary investigation, it appears to the director probable that a violation of this chapter, or the regulations thereunder, has occurred, the director, in his or her discretion, may suggest measures that in the director's judgment would compensate the complainant for the damages he or she has suffered as a result of the alleged violation. If the service dealer or service contractor accepts the director's suggestions and performs accordingly, the director shall give that fact due consideration in any subsequent disciplinary proceeding. If the service dealer or service contractor declines to abide by the suggestions of the director, the director may investigate further and may institute disciplinary proceedings in accordance with the provisions of this chapter.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 54. Section 9863 of the Business and Professions Code, as added by Section 10.5 of Chapter 1265 of the Statutes of 1993, is amended to read:

9863. If, upon summary investigation, it appears to the director probable that a violation of this chapter, or the regulations thereunder, has occurred, the director, in his or her discretion, may suggest measures that in the director's judgment would compensate the complainant for the damages he or she has suffered as a result of the alleged violation. If the service dealer accepts the director's suggestions and performs accordingly, the director shall give that fact

due consideration in any subsequent disciplinary proceeding. If the service dealer declines to abide by the suggestions of the director, the director may investigate further and may institute disciplinary proceedings in accordance with the provisions of this chapter.

This section shall become operative on January 1, 2003.

SEC. 55. Section 9873 of the Business and Professions Code, as amended by Section 11 of Chapter 1265 of the Statutes of 1993, is amended to read:

9873. The fees prescribed by this chapter shall be set by the director by regulation, according to the following schedule:

(a) (1) The initial registration fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred sixty-five dollars ($165) for each place of business in this state. The initial registration fee for a service contractor is not more than seventy-five dollars ($75) for each place of business in this state.

(2) The initial registration fee for a person who engages in business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than three hundred twenty-five dollars ($325) for each place of business in this state. The initial registration fee for a person who is a service contractor and engages in business as either an electronic repair industry service dealer or an appliance repair industry service dealer is not more than two hundred forty dollars ($240) for each place of business in this state.

(3) The initial registration fee for a person who engages in both the electronic repair industry and the appliance repair industry as a service dealer and is a service contractor is not more than four hundred dollars ($400) for each place of business in this state.

A service dealer or service contractor who does not operate a place of business in this state, but engages in the electronic repair industry, the appliance repair industry, or sells, issues, or administers service contracts in this state shall pay the registration fee specified herein as if he or she had a place of business in this state.

(b) (1) The annual registration renewal fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred sixty-five dollars ($165) for each place of business in this state, if renewed prior to its expiration date. The annual registration renewal fee for a service contractor is seventy-five dollars ($75) for each place of business in this state, if renewed prior to its expiration date.

(2) The annual renewal fee for a service dealer who engages in the business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than three hundred dollars ($300) for each place of business in this state.

(3) The annual renewal fee for a service dealer who engages in the electronic repair industry and the appliance repair industry and is a

service contractor is not more than three hundred seventy-five dollars ($375) for each place of business in this state.

A service dealer or service contractor who does not operate a place of business in this state, but who engages in the electronic repair industry, the appliance repair industry, or sells or issues service contracts in this state shall pay the registration fee specified herein as if he or she had a place of business in this state.

(c) The delinquency fee is an amount equal to 50 percent of the renewal fee for a license in effect on the date of renewal of the license, except as otherwise provided in Section 163.5.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 56. Section 9873 of the Business and Professions Code, as added by Section 11.5 of Chapter 1265 of the Statutes of 1993, is amended to read:

9873. The fees prescribed by this chapter shall be set by the director by regulation, according to the following schedule:

(a) The initial registration fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred sixty-five dollars ($165) for each place of business in this state. The initial registration fee for a person who engages in business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than three hundred twenty-five dollars ($325).

(b) The annual registration renewal fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred sixty-five dollars ($165) for each place of business in this state, if renewed prior to its expiration date. The annual renewal fee for a service dealer who engages in the business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than three hundred dollars ($300).

(c) The delinquency fee is an amount equal to 50 percent of the renewal fee for a license in effect on the date of renewal of the license, except as otherwise provided in Section 163.5.

This section shall become operative on January 1, 2003.

SEC. 57. Section 19008 of the Business and Professions Code is amended to read:

19008. "Secondhand" means any materials or articles used in the construction of bedding or upholstered furniture that have been previously used for any purpose, and shall include "sweepings" which are wastes recovered from gins, furniture and bedding factories, textile plants, or establishments using fibers or other materials. Manufacturing processes shall not be considered previous use, and new materials that are free from dirt or other contamination shall not be classified as sweepings.

SEC. 58. Section 19010 of the Business and Professions Code is amended to read:

19010. "Bedding renovator" means a person who rebuilds, repairs, makes over, re-covers, restores, renovates or renews bedding.

SEC. 59. 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, rebuild, 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 the article or material is plainly and indelibly labeled. This does not include furniture used exclusively for the purpose of physical fitness and exercise.

SEC. 60. Section 19123.4 of the Business and Professions Code is amended to read:

19123.4. Newly manufactured articles of bedding that contain any secondhand filling material shall be sanitized before they are offered or exposed for sale.

SEC. 61. Section 19208 of the Business and Professions Code is amended to read:

19208. The chief may cite any person subject to the provisions of this chapter to an office conference before the chief to show cause why he or she should not be subject to disciplinary action or prosecution for any act or omission in violation of this chapter.

SEC. 62. Section 1791 of the Civil Code, as amended by Section 1 of Chapter 461 of the Statutes of 1995, is amended to read:

1791. As used in this chapter:

(a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

(b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling consumer goods at retail. As used in this subdivision, "person" means any individual, partnership, corporation, limited liability company, association, or other legal entity that engages in any such business.

(c) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber, or leather or similar fabric.

(d) "Consumables" means any product that is intended for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered

within the household, and that usually is consumed or expended in the course of consumption or use.

(e) "Distributor" means any individual, partnership, corporation, association, or other legal relationship that stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods.

(f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, that engages in the business of servicing and repairing consumer goods.

(g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.

(h) "Lessee" means an individual who leases consumer goods under a lease.

(i) "Lessor" means a person who regularly leases consumer goods under a lease.

(j) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship that manufactures, assembles, or produces consumer goods.

(k) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for these goods.

(*l*) "Retail seller," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal relationship that engages in the business of selling or leasing consumer goods to retail buyers.

(m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (k).

(n) "Sale" means (1) the passing of title from the seller to the buyer for a price, or (2) a consignment for sale.

(o) "Service contract" means a contract in writing to perform, for an additional cost, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.

(p) "Service contract administrator" or "administrator" means a person, other than a service contract seller or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate who performs or arranges, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or

arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers:

(1) Providing service contract sellers with service contract forms.

(2) Participating in the adjustment of claims arising from service contracts.

(3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2. A service contract administrator shall not be an obligor on a service contract.

(q) "Service contract seller" or "seller" means a person who sells or offers to sell a service contract to a service contractholder.

(r) "Service contractor" means a service contract administrator or a service contract seller.

(s) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, that is used or intended to be used, to assist an individual with a disability in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of an individual with a disability, except that this term does not include prescriptive lenses and other ophthalmic goods unless they are sold or dispensed to a blind person, as defined in Section 19153 of the Welfare and Institutions Code, and unless they are intended to assist the limited vision of the person so disabled.

(t) "Catalog or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device.

(u) "Home appliance" means any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, garbage disposal, trash compactor, or room air-conditioner normally used or sold for personal, family, or household purposes.

(v) "Home electronic product" means any television, radio, antenna rotator, audio or video recorder or playback equipment, video camera, video game, video monitor, computer equipment, telephone, telecommunications equipment, electronic alarm system, electronic appliance control system, or other kind of electronic product, if it is normally used or sold for personal, family, or household purposes. The term includes any electronic accessory that is normally used or sold with a home electronic product for one of those purposes. The term excludes any single product with a wholesale price to the retail seller of less than fifty dollars ($50).

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 63. Section 1791 of the Civil Code, as amended by Section 2 of Chapter 461 of the Statutes of 1995, is amended to read:

1791. As used in this chapter:

(a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

(b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling consumer goods at retail. As used in this subdivision, "person" means any individual, partnership, corporation, limited liability company, association, or other legal entity that engages in any of these businesses.

(c) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber, or leather or similar fabric.

(d) "Consumables" means any product that is intended for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of consumption or use.

(e) "Distributor" means any individual, partnership, corporation, association, or other legal relationship that stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods.

(f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, that engages in the business of servicing and repairing consumer goods.

(g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.

(h) "Lessee" means an individual who leases consumer goods under a lease.

(i) "Lessor" means a person who regularly leases consumer goods under a lease.

(j) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship that manufactures, assembles, or produces consumer goods.

(k) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for consumer goods.

(*l*) "Retail seller," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal relationship that engages in the business of selling or leasing consumer goods to retail buyers.

(m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (k).

(n) "Sale" means (1) the passing of title from the seller to the buyer for a price, or (2) a consignment for sale.

(o) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.

(p) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, that is used or intended to be used, to assist an individual with a disability in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of an individual with a disability, except that this term does not include prescriptive lenses and other ophthalmic goods unless they are sold or dispensed to a blind person, as defined in Section 19153 of the Welfare and Institutions Code and unless they are intended to assist the limited vision of the person so disabled.

(q) "Catalog or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device.

(r) "Home appliance" means any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, garbage disposal, trash compactor, or room air-conditioner normally used or sold for personal, family, or household purposes.

(s) "Home electronic product" means any television, radio, antenna rotator, audio or video recorder or playback equipment, video camera, video game, video monitor, computer equipment, telephone, telecommunications equipment, electronic alarm system, electronic appliance control system, or other kind of electronic product, if it is normally used or sold for personal, family, or household purposes. The term includes any electronic accessory that is normally used or sold with a home electronic product for one of those purposes. The term excludes any single product with a wholesale price to the retail seller of less than fifty dollars ($50).

This section shall become operative on January 1, 2003.

SEC. 64. Section 1794.4 of the Civil Code, as amended by Section 13 of Chapter 1265 of the Statutes of 1993, is amended to read:

1794.4. (a) Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to, or in lieu of, an express warranty if that contract fully and conspicuously discloses in simple and readily understood language the terms, conditions, and exclusions of that contract, provided that nothing in this section shall apply to a home protection contract issued by a home protection

company that is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.

(b) Except as otherwise expressly provided in the service contract, every service contract shall obligate the service contract seller to provide to the buyer of the product all of the services and functional parts that may be necessary to maintain proper operation of the entire product under normal operation and service for the duration of the service contract and without additional charge.

(c) The service contract shall contain all of the following items of information:

(1) A clear description and identification of the covered product.

(2) The point in time or event when the term of the service contract commences, and its duration measured by elapsed time or an objective measure of use.

(3) If the enforceability of the service contract is limited to the original buyer or is limited to persons other than every consumer owner of the covered product during the term of the service contract, a description of the limits on transfer or assignment of the service contract.

(4) A statement of the general obligation of the service contract seller in the same language set forth in subdivision (b), with equally clear and conspicuous statements of (A) any services, parts, characteristics, components, properties, defects, malfunctions, causes, conditions, repairs, or remedies that are excluded from the scope of the service contract; (B) any other limits on the application of the language in subdivision (b) such as a limit on the total number of service calls; (C) any additional services that the service contract seller will provide; (D) whether the obligation of the service contract seller includes preventive maintenance and, if so, the nature and frequency of the preventive maintenance that the service contractor will provide; and (E) whether the buyer has an obligation to provide preventive maintenance or perform any other obligations and, if so, the nature and frequency of the preventive maintenance and of any other obligations, and the consequences of any noncompliance.

(5) A step-by-step explanation of the procedure that the buyer should follow in order to obtain performance of any obligation under the service contract, including (A) the full legal and business name of the service contract seller; (B) the mailing address of the service contract seller; (C) the persons or class of persons that are authorized to perform service; (D) the name or title and address of any administrator, agent, employee, or department of the service contract seller that is responsible for the performance of any obligations; (E) the method of giving notice to the service contract seller of the need for service; (F) whether in-home service is provided or, if not, whether the costs of transporting the product, for service or repairs will be paid by the service contract seller; (G) if the product must be transported to the service contract seller, either the place where the product may be delivered for service or repairs or

a toll-free telephone number that the buyer may call to obtain that information; (H) all other steps that the buyer must take to obtain service; and (I) all fees, charges, and other costs that the buyer must pay to obtain service.

(6) An explanation of the steps that the service contract seller will take to carry out its obligations under the service contract.

(7) A description of any right to cancel the contract if the buyer returns the product or the product is sold, lost, stolen, or destroyed, or, if there is no right to cancel or the right to cancel is limited, a statement of the fact.

(8) Information respecting the availability of any informal dispute settlement process.

(9) A statement identifying the person who is financially and legally obligated to perform the services specified in the service contract, including the name and address of that person.

Nothing in this subdivision shall preclude a service contract seller from designating an administrator that a service contractholder may initially contact for performance of the obligations under the service contract.

(d) Subdivisions (b) and (c) of this section are applicable to service contracts on new or used home appliances and home electronic products entered into on or after July 1, 1989. They are applicable to service contracts on all other new or used products entered into on and after July 1, 1991.

(e) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 65. Section 1794.4 of the Civil Code, as added by Section 13.5 of Chapter 1265 of the Statutes of 1993, is amended to read:

1794.4. (a) Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to or in lieu of an express warranty if that contract fully and conspicuously discloses in simple and readily understood language the terms, conditions, and exclusions of that contract, provided that nothing in this section shall apply to a home protection contract issued by a home protection company that is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.

(b) Except as otherwise expressly provided in the service contract, every service contract shall obligate the service contractor to provide to the buyer of the product all of the services and functional parts that may be necessary to maintain proper operation of the entire product under normal operation and service for the duration of the service contract and without additional charge.

(c) The service contract shall contain all of the following items of information:

(1) A clear description and identification of the covered product.

(2) The point in time or event when the term of the service contract commences, and its duration measured by elapsed time or an objective measure of use.

(3) If the enforceability of the service contract is limited to the original buyer or is limited to persons other than every consumer owner of the covered product during the term of the service contract, a description of the limits on transfer or assignment of the service contract.

(4) A statement of the general obligation of the service contractor in the same language set forth in subdivision (b), with equally clear and conspicuous statements of (A) any services, parts, characteristics, components, properties, defects, malfunctions, causes, conditions, repairs, or remedies that are excluded from the scope of the service contract; (B) any other limits on the application of the language in subdivision (b) such as a limit on the total number of service calls; (C) any additional services that the service contractor will provide; (D) whether the obligation of the service contractor includes preventive maintenance and, if so, the nature and frequency of the preventive maintenance that the service contractor will provide; and (E) whether the buyer has an obligation to provide preventive maintenance or perform any other obligations and, if so, the nature and frequency of the preventive maintenance and of any other obligations, and the consequences of any noncompliance.

(5) A step-by-step explanation of the procedure that the buyer should follow in order to obtain performance of any obligation under the service contract including (A) the full legal and business name of the service contractor; (B) the mailing address of the service contractor; (C) the persons or class of persons that are authorized to perform service; (D) the name or title and address of any agent, employee, or department of the service contractor that is responsible for the performance of any obligations; (E) the method of giving notice to the service contractor of the need for service; (F) whether in-home service is provided or, if not, whether the costs of transporting the product, for service or repairs will be paid by the service contractor; (G) if the product must be transported to the service contractor, either the place where the product may be delivered for service or repairs or a toll-free telephone number that the buyer may call to obtain that information; (H) all other steps that the buyer must take to obtain service; and (I) all fees, charges, and other costs that the buyer must pay to obtain service.

(6) An explanation of the steps that the service contractor will take to carry out its obligations under the service contract.

(7) A description of any right to cancel the contract if the buyer returns the product or the product is sold, lost, stolen, or destroyed, or, if there is no right to cancel or the right to cancel is limited, a statement of the fact.

(8) Information respecting the availability of any informal dispute settlement process.

(d) Subdivisions (b) and (c) of this section are applicable to service contracts on new or used home appliances and home electronic products entered into on or after July 1, 1989. They are applicable to service contracts on all other new or used products entered into on and after July 1, 1991.

(e) This section shall become operative on January 1, 2003.

SEC. 66. 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 402

An act to amend Sections 2152 and 42685 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 2, 1997. Filed with Secretary of State September 2, 1997.]

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

SECTION 1. Section 2152 of the Food and Agricultural Code is amended to read:

2152. If, within 60 days after the receipt of the list of persons who are licensed, the appointing power fails to appoint a commissioner from the list, the secretary shall appoint a commissioner from the list.

SEC. 2. Section 42685 of the Food and Agricultural Code is amended to read:

42685. (a) Upon recommendation of the commissioner and upon making a finding that extraordinary circumstances have resulted in the need for inspection of imported fruits, nuts, or vegetables pursuant to this division, the board of supervisors of a county may establish a schedule of fees to be charged to the importer, by the commissioner, for the recovery of costs connected with the commissioner's inspection in order to assure compliance with this division. This authority applies only to inspections conducted at ports of entry or points of initial availability inspected by the commissioner.

(b) (1) The authority of the board of supervisors to establish a schedule of fees under this section applies only when a mandatory

inspection or certification program presently exists in the state for the same commodity and where a fee is collected pursuant to authority granted in Article 5 (commencing with Section 42761) or Article 6 (commencing with Section 42791).

(2) In no case may the fees established for inspection of imported fruits, nuts, and vegetables exceed the fees set for the mandatory inspection or certification program.

(3) The secretary may adopt regulations, including, but not limited to, establishing recommended county enforcement cost recovery fees.

(c) In addition to any other penalties available under the law, the commissioner may place a hold order on any lot of fruits, nuts, or vegetables on which he or she has assessed a fee pursuant to this section if the importer has failed to pay that fee.

CHAPTER 403

An act to add Sections 27643 and 27644 to the Food and Agricultural Code, relating to food.

[Approved by Governor September 2, 1997. Filed with Secretary of State September 2, 1997.]

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

SECTION 1. Section 27643 is added to the Food and Agricultural Code, to read:

27643. (a) It is unlawful for an egg handler, as defined in Section 27510, to hold, store, transport, or display eggs that are packed or graded for human consumption unless the eggs are held, stored, transported, or displayed consistent with all of the following requirements:

(1) At an average ambient temperature of 45 degrees Fahrenheit, or lower.

(2) At a temperature equal to or less than the temperature requirement for holding, storing, transporting, or displaying eggs established by regulations of the United States Department of Agriculture in Title 7 of Part 56 of the Code of Federal Regulations governing the grading of shell eggs.

(b) Retail outlets that are regulated by this chapter, except for retail outlets located in shell egg packing or distribution facilities, are exempt from subdivision (a).

(c) Certified farmers' markets, as defined in Section 113745 of the Health and Safety Code, are not required to comply with subdivision (a).

(d) Transport vehicles may exceed the 45 degree Fahrenheit maximum temperature required pursuant to subdivision (a) when

eggs are either being loaded into the transport vehicle or unloaded from the transport vehicle. A transport vehicle shall be deemed to be in compliance with subdivision (a) if the transport vehicle is equipped and has in operation when eggs are in the transport vehicle a refrigeration unit delivering air at a temperature of 45 degrees Fahrenheit or lower.

SEC. 2. Section 27644 is added to the Food and Agricultural Code, to read:

27644. (a) It is unlawful for an egg handler, as defined in Section 27510, to sell, offer for sale, or expose for sale eggs that are packed or graded for human consumption unless at least one of the following conditions is met:

(1) The consumer container is plainly, legibly, and conspicuously labeled "KEEP REFRIGERATED" or with words of similar meaning.

(2) A conspicuous sign is posted at the point of sale for eggs on bulk display advising consumers that the eggs are to be refrigerated as soon as practical after purchase.

(b) It is unlawful for an egg handler to sell, offer for sale, or expose for sale eggs that are packed for human consumption unless each container and subcontainer is labeled on one outside top, side, or end with both of the following:

(1) (A) The words "Sell-by" immediately followed by the month and day in bold type, for example "June 30" or "6-30." Common abbreviations of months shall be permitted.

(B) The sell-by date shall not exceed 30 days from the date on which the eggs were packed, excluding the date of packing.

(C) If the eggs are repacked but not regraded, the original sell-by date shall apply.

(2) The identification number of the plant of origin.

SEC. 3. 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.

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

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

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

CHAPTER 404

An act to amend Section 44259 of the Education Code, relating to teacher credentialing.

[Approved by Governor September 2, 1997. Filed with Secretary of State September 2, 1997.]

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

SECTION 1. Section 44259 of the Education Code is amended to read:

44259. (a) Each program of professional preparation for multiple or single subject teaching credentials shall not include more than one year of, or the equivalent of one-fifth of a five-year program in, professional preparation.

(b) The minimum requirements for the preliminary multiple or single subject teaching credential, are all of the following:

(1) A baccalaureate degree or higher degree, except in professional education, from a regionally accredited institution of postsecondary education.

(2) Passage of the state basic skills examination that is developed and administered by the commission pursuant to Section 44252.5.

(3) Completion of a program of not more than one year of professional preparation that has been approved or accredited on the basis of standards of program quality and effectiveness pursuant to subdivision (a) of Section 44227, subdivisions (a), (b), and (c) of Section 44372, or Section 44376.

(4) Study of alternative methods of developing English language skills, including the study of reading as described in subparagraphs (A) and (B), among all pupils, including those for whom English is a second language, in accordance with the commission's standards of program quality and effectiveness. The study of reading shall meet the following requirements:

(A) Commencing January 1, 1997, satisfactory completion of comprehensive reading instruction that is research-based and includes all of the following:

(i) The study of organized, systematic, explicit skills including phonemic awareness, direct, systematic, explicit phonics, and decoding skills.

(ii) A strong literature, language, and comprehension component with a balance of oral and written language.

(iii) Ongoing diagnostic techniques that inform teaching and assessment.

(iv) Early intervention techniques.

(v) Guided practice in a clinical setting.

(B) For the purposes of this section, "direct, systematic, explicit phonics" means phonemic awareness, spelling patterns, the direct instruction of sound/symbol codes and practice in connected text and the relationship of direct, systematic, explicit phonics to the components set forth in clauses (i) to (v), inclusive.

A program for the multiple subjects credential also shall include the study of integrated methods of teaching language arts.

(5) Completion of a subject matter program that has been approved by the commission on the basis of standards of program quality and effectiveness pursuant to Article 6 (commencing with Section 44310) or passage of a subject matter examination pursuant to Article 5 (commencing with Section 44280).

(6) Demonstration of a knowledge of the principles and provisions of the Constitution of the United States pursuant to Section 44335.

(7) Commencing January 1, 2000, demonstration, in accordance with the commission's standards of program quality and effectiveness, of basic competency in the use of computers in the classroom.

(c) The minimum requirements for the professional multiple or single subject teaching credential shall include completion of the following studies:

(1) Study of health education, including study of nutrition, cardiopulmonary resuscitation, and the physiological and sociological effects of abuse of alcohol, narcotics, and drugs and the use of tobacco. Training in cardiopulmonary resuscitation shall also meet the standards established by the American Heart Association or the American Red Cross.

(2) Study and field experience in methods of delivering appropriate educational services to students with exceptional needs in regular education programs.

(3) Study, in accordance with the commission's standards of program quality and effectiveness, of advanced computer-based technology, including the uses of technology in educational settings.

(4) Completion of an approved fifth year program after completion of a baccalaureate degree at an accredited institution.

(d) A credential that was issued prior to the effective date of this section shall remain in force as long as it is valid under the laws and regulations that were in effect on the date it was issued. The commission may not, by regulation, invalidate an otherwise valid credential unless it issues to the holder of the credential, in substitution, a new credential authorized by another provision in this chapter that is no less restrictive than the credential for which it was substituted with respect to the kind of service authorized and the grades, classes, or types of schools in which it authorizes service.

(e) Notwithstanding this section, persons who were performing teaching services as of January 1, 1991, pursuant to the language of

this section that was in effect prior to that date, may continue to perform those services without complying with any requirements that may be added by the amendments adding this subdivision.

(f) Subparagraphs (A) and (B) of paragraph (4) of subdivision (b) do not apply to any person who, as of January 1, 1997, holds a multiple or single subject teaching credential, or to any person enrolled in a program of professional preparation for a multiple or single subject teaching credential as of January 1, 1997, who subsequently completes that program. It is the intent of the Legislature that the requirements of subparagraphs (A) and (B) of paragraph (4) of subdivision (b) be applied only to persons who enter a program of professional preparation on or after January 1, 1997.

CHAPTER 405

An act to add Section 48900.7 to the Education Code, relating to pupils.

[Approved by Governor September 5, 1997. Filed with Secretary of State September 5, 1997.]

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

SECTION 1. Section 48900.7 is added to the Education Code, to read:

48900.7. (a) In addition to the reasons specified in Sections 48900, 48900.2, 48900.3, and 48900.4, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has made terroristic threats against school officials or school property, or both.

(b) For the purposes of this section, "terroristic threat" shall include any statement, whether written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars ($1,000), with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, or for the protection of

school district property, or the personal property of the person threatened or his or her immediate family.

CHAPTER 406

An act to amend Section 41512.7 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 5, 1997. Filed with Secretary of State September 5, 1997.]

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

SECTION 1. Section 41512.7 of the Health and Safety Code is amended to read:

41512.7. (a) No district with an annual budget of less than one million dollars ($1,000,000) shall increase any existing fees for authority-to-construct permits or permits to operate by more than 30 percent in any calendar year, unless required to comply with the minimum fee requirements of Title V.

(b) No district with an annual budget of one million dollars ($1,000,000) or more shall increase any existing fees for authority-to-construct permits or permits to operate by more than 15 percent in any calendar year.

(c) Notwithstanding subdivision (b), this section shall not apply to the south coast district.

(d) (1) Notwithstanding subdivision (b), effective January 1, 1998, any of the San Diego County Air Pollution Control District's individual fees for authority-to-construct permits and permits to operate may reflect the district's actual costs, as determined by the district's fee-for-service calculations.

(2) Notwithstanding paragraph (1) or subdivision (b), on and after January 1, 1999, the San Diego County Air Pollution Control District may increase any individual fees for authority-to-construct permits and permits to operate by more than 15 percent in any fiscal year only if the total, aggregate increase in existing fees for authority-to-construct permits and permits to operate does not exceed 15 percent in that fiscal year.

(3) (A) This subdivision shall remain operative so long as the San Diego County Air Pollution Control District continues to determine fees for authority-to-construct permits and permits to operate pursuant to a cost-based fee system in which all of the following requirements are met:

(i) Fees for authority-to-construct permits and permits to operate are specified for a minimum of 120 separate equipment and process categories.

(ii) Labor expended to issue authority-to-construct permits and permits to operate is tracked in increments of 0.5 hours or less for each of those categories.

(iii) The fees for authority-to-construct permits and permits to operate are determined from the costs of labor tracked in increments of 0.5 hours or less and other actual and projected costs related to permitted stationary sources.

(B) This subdivision shall become inoperative if, and at the time that, the San Diego district ceases to determine fees for authority-to-construct permits and permits to operate as specified in subparagraph (A).

CHAPTER 407

An act making an appropriation for the payment of claims against the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 5, 1997. Filed with Secretary of State September 5, 1997.]

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

SECTION 1. (a) The sum of eight hundred forty thousand three hundred fifty dollars and sixty cents ($840,350.60) is hereby appropriated to the Executive Officer of the State Board of Control to pay claims accepted by the State Board of Control in accordance with the schedule set forth in subdivision (b). Those payments shall be made from the funds and accounts identified in that schedule. In the case of Budget Act items and item schedules identified in the schedule set forth in subdivision (b), those payments shall be made from the funds appropriated in the item or item schedule.

(b) Pursuant to subdivision (a), claims accepted by the State Board of Control shall be paid in accordance with the following schedule:

Total for Fund: Bank and Corporation Tax Fund	$1,010.02
Total for Fund: Employment Development Contingent Fund	$513.45
Total for Fund: Fish and Game Preservation Fund	$15.00
Total for Fund: General Fund	$97,782.70
Total for Fund: Health Care Deposit Fund	$1,508.45

Total for Fund: Item 0820−001−0001(e), Budget Act of 1997	$686.50
Total for Fund: Item 0890−001−0001(a), Budget Act of 1997	$800.00
Total for Fund: Item 2150−001−0298(a), Budget Act of 1997	$33,912.42
Total for Fund: Item 2660−001−0042(b), Budget Act of 1997	$8,911.07
Total for Fund: Item 2720−001−0044(a), Budget Act of 1997	$5,288.44
Total for Fund: Item 2740−001−0044(a), Budget Act of 1997	$2,158.50
Total for Fund: Item 3540−001−0001(a), Budget Act of 1997	$980.93
Total for Fund: Item 3600−001−0200(a), Budget Act of 1997	$45.05
Total for Fund: Item 3600−001−0200(c), Budget Act of 1997	$10,694.93
Total for Fund: Item 3790−001−0001, Budget Act of 1997	$5,069.67
Total for Fund: Item 3790−490−0786(14), Budget Act of 1996	$112,000.00
Total for Fund: Item 3860−001−0001(e), Budget Act of 1997	$1,049.21
Total for Fund: Item 3900−001−0044(a), Budget Act of 1997	$3,025.72
Total for Fund: Item 4260−001−0001(1), Budget Act of 1997	$411.00
Total for Fund: Item 4260−001−0001 (1), Budget Act of 1997	$125.00
Total for Fund: Item 4260−001−0001(2), Budget Act of 1997	$2,063.00
Total for Fund: Item 4300−001−0001(b), Budget Act of 1997	$2,901.02
Total for Fund: Item 4300−003−0001(a), Budget Act of 1997	$1,754.70
Total for Fund: Item 4300−101−0001 (b), Budget Act of 1997	$447.80
Total for Fund: Item 4440−001−0001(a), Budget Act of 1997	$5,548.15

Total for Fund: Item 5100−001−0870(a), Budget Act of 1997	$1,583.37
Total for Fund: Item 5100−001−0588, Budget Act of 1997	$10,661.14
Total for Fund: Item 5100−001−0870(a), Budget Act of 1997	$56.00
Total for Fund: Item 5100−001−0870(b), Budget Act of 1997	$4,634.57
Total for Fund: Item 5100−001−0870(b), Budget Act of 1997	$59.74
Total for Fund: Item 5100−101−0871, Budget Act of 1997	$380.00
Total for Fund: Item 5160−001−0001(a), Budget Act of 1997	$2,329.73
Total for Fund: Item 5180−001−0001(a), Budget Act of 1997	$3,082.50
Total for Fund: Item 5180−001−0001(d), Budget Act of 1997	$1,035.28
Total for Fund: Item 5240−001−0001(a), Budget Act of 1997	$48,238.29
Total for Fund: Item 5460−001−0001(a), Budget Act of 1997	$90,138.87
Total for Fund: Item 5460−001−0001(c), Budget Act of 1997	$2,166.28
Total for Fund: Item 6110−005−0001(a)(2), Budget Act of 1997	$256.00
Total for Fund: Item 6110−230−0001, Budget Act of 1997	$41.69
Total for Fund: Item 6360−001−0408(a), Budget Act of 1997	$79,475.34
Total for Fund: Item 6610−001−0001(a), Budget Act of 1997	$1,649.09
Total for Fund: Item 8350−001−0001(3), Budget Act of 1997	$3,256.00
Total for Fund: Item 8660−001−0462(a), Budget Act of 1997	$727.48
Total for Fund: Item 8700−001−0001(a), Budget Act of 1997	$2,382.10
Total for Fund: Item 8940−001−0001(a), Budget Act of 1997	$10,386.36

Total for Fund: Litigation Deposit Fund	$37.12
Total for Fund: Motor Vehicle Account, Transportation Fund	$38.20
Total for Fund: Personal Income Tax Fund	$702.72
Total for Fund: Public Employees Health Care Fund	$144.00
Total for Fund: Retail Sales and Use Tax Fund	$19,467.79
Total for Fund: State Highway Account, Transportation Fund	$168,261.01
Total for Fund: Tax Relief and Refund Account	$62,300.67
Total for Fund: Unclaimed Property Fund	$1,688.30
Total for Fund: Unemployment Compensation Disability Fund	$25,003.35
Total for Fund: Water Resources Development Bond Fund	$54.72
Total for Fund: Welfare Advance Fund	$1,410.16

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

In order to settle claims against the state and end hardship to claimants as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 408

An act to amend Section 12050 of the Penal Code, relating to weapons.

[Approved by Governor September 5, 1997. Filed with Secretary of State September 5, 1997.]

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

SECTION 1. Section 12050 of the Penal Code is amended to read:

12050. (a) (1) (A) The sheriff of a county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of the county or a city within the county, may issue to that person a license to carry

a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

(i) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(ii) Where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of that city, may issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

(i) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(ii) Where the population of the county in which the city is located is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) A license issued pursuant to this section is valid for any period of time not to exceed one year from the date of the license, or in the case of a peace officer appointed pursuant to Section 830.6, three years from the date of the license.

(b) A license may include any reasonable restrictions or conditions which the issuing authority deems warranted, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(c) Any restrictions imposed pursuant to subdivision (b) shall be indicated on any license issued.

(d) A license shall not be issued if the Department of Justice determines that the person is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(e) (1) The license shall be revoked by the local licensing authority if at any time either the local licensing authority is notified by the Department of Justice that a licensee is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, or the local licensing authority determines that the person is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) If at any time the Department of Justice determines that a licensee is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and

Institutions Code, the department shall immediately notify the local licensing authority of the determination.

(3) If the local licensing authority revokes the license, the Department of Justice shall be notified of the revocation pursuant to Section 12053. The licensee shall also be immediately notified of the revocation in writing.

(f) (1) A person issued a license pursuant to this section may apply to the licensing authority for an amendment to the license to do one or more of the following:

(A) Add or delete authority to carry a particular pistol, revolver, or other firearm capable of being concealed upon the person.

(B) Authorize the licensee to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(C) If the population of the county is less than 200,000 persons according to the most recent federal decennial census, authorize the licensee to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(D) Change any restrictions or conditions on the license, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) When the licensee changes his or her address, the license shall be amended to reflect the new address and a new license shall be issued pursuant to paragraph (3).

(3) If the licensing authority amends the license, a new license shall be issued to the licensee reflecting the amendments.

(4) The licensee shall notify the licensing authority in writing within 10 days of any change in the licensee's place of residence. If the license is one to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person, then it may not be revoked solely because the licensee changes his or her place of residence to another county if the licensee has not breached any conditions or restrictions set forth in the license or has not fallen into a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. If the license is one to carry loaded and exposed a pistol, revolver, or other firearm capable of being concealed upon the person, the license shall be revoked immediately if the licensee changes his or her place of residence to another county.

(5) An amendment to the license does not extend the original expiration date of the license and the license shall be subject to renewal at the same time as if the license had not been amended.

(6) An application to amend a license does not constitute an application for renewal of the license.

CHAPTER 409

An act to add Chapter 2.96 (commencing with Section 7286.65) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 5, 1997. Filed with Secretary of State September 5, 1997.]

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

SECTION 1. Chapter 2.96 (commencing with Section 7286.65) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.96. MADERA TRANSACTIONS AND USE TAX

7286.65. (a) Subject to subdivision (b), the City of Madera may levy a transactions and use tax at a rate of 0.25 percent, if an ordinance or resolution proposing that tax is approved by a majority vote of all the members of the city council and the tax is approved by a two-thirds vote of the qualified voters of the city voting in an election on the issue.

(b) (1) The transactions and use tax imposed pursuant to this chapter shall conform to Part 1.6 (commencing with Section 7251).

(2) The net revenues derived from a tax imposed by this section shall be expended only for public safety services, as defined in Section 30052 of the Government Code, and shall be in addition to, and not supplant, the level of funding for public safety services that was provided from other revenue sources by the City of Madera for the 1996–97 fiscal year.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution since the City of Madera is in a unique geographical and financial situation not shared by other cities in the state.

CHAPTER 410

An act to amend Sections 654 and 976.5 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 15, 1997. Filed with Secretary of State September 15, 1997.]

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

SECTION 1. Section 654 of the Penal Code is amended to read:

654. (a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.

(b) Notwithstanding subdivision (a), a defendant sentenced pursuant to subdivision (a) shall not be granted probation if any of the provisions that would otherwise apply to the defendant prohibits the granting of probation.

SEC. 2. Section 976.5 of the Penal Code is amended to read:

976.5. (a) Notwithstanding any other provision of law, when an accusatory pleading is filed in Sierra County and the defendant is in the custody of Nevada County, he or she may be arraigned before a court in Nevada County.

(b) This section shall not interfere with the right of a defendant to demur to an accusatory pleading, as specified in Chapter 3 (commencing with Section 1002) of Title 6.

(c) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because 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 411

An act to add Section 19328 to the Education Code, relating to the law library of the California State Library.

[Approved by Governor September 15, 1997. Filed with Secretary of State September 15, 1997.]

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

SECTION 1. Section 19328 is added to the Education Code, to read:

19328. (a) The Legislature hereby finds and declares that Bernard E. Witkin's legendary contribution to California law is deserving of a lasting tribute and an expression of gratitude from the state whose legal system, he, more than any other single individual in the 20th century, helped to shape.

(b) The law library of the California State Library, located in the Library and Courts Building in the City and County of Sacramento, is hereby designated as the Bernard E. Witkin State Law Library of California.

(c) The State Librarian, in cooperation with the Department of General Services, may install appropriate plaques and markers showing this special designation upon receiving donations from nonstate resources to cover any costs.

CHAPTER 412

An act to amend Section 664 of the Penal Code, relating to crime.

[Approved by Governor September 18, 1997. Filed with Secretary of State September 19, 1997.]

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

SECTION 1. Section 664 of the Penal Code is amended to read:

664. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts, as follows:

(a) If the crime attempted is punishable by imprisonment in the state prison, the person guilty of the attempt shall be punished by imprisonment in the state prison for one-half the term of imprisonment prescribed upon a conviction of the offense attempted. However, if the crime attempted is willful, deliberate, and premeditated murder, as defined in Section 189, the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole. If the crime attempted is any other one in which the maximum sentence is life imprisonment or death, the person guilty of the attempt shall be punished by imprisonment in the state prison for five, seven, or nine years. The additional term provided in this section for attempted willful, deliberate, and premeditated murder shall not be imposed unless the fact that the attempted murder was willful, deliberate, and

premeditated is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(b) If the crime attempted is punishable by imprisonment in a county jail, the person guilty of the attempt shall be punished by imprisonment in a county jail for a term not exceeding one-half the term of imprisonment prescribed upon a conviction of the offense attempted.

(c) If the offense so attempted is punishable by a fine, the offender convicted of that attempt shall be punished by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense attempted.

(d) If a crime is divided into degrees, an attempt to commit the crime may be of any of those degrees, and the punishment for the attempt shall be determined as provided by this section.

(e) Notwithstanding subdivision (a), if attempted murder is committed upon a peace officer or firefighter, as those terms are defined in paragraphs (7) and (9) of subdivision (a) of Section 190.2, and the person who commits the offense knows or reasonably should know that the victim is such a peace officer or firefighter engaged in the performance of his or her duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life with the possibility of parole.

This subdivision shall apply if it is proven that a direct but ineffectual act was committed by one person toward killing another human being and the person committing the act harbored express malice aforethought, namely, a specific intent to unlawfully kill another human being. The Legislature finds and declares that this paragraph is declaratory of existing law.

(f) Notwithstanding subdivision (a), if the elements of subdivision (e) are proven in an attempted murder and it is also proven that the attempted murder was willful, deliberate, premeditated, and admitted or found to be true by the trier of fact, the person guilty of the attempt shall be punished by imprisonment in the state prison for 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce this minimum term of 15 years in state prison, and the person shall not be released prior to serving 15 years' confinement.

CHAPTER 413

An act to amend Section 190 of the Penal Code, relating to crimes.

[Approved by Governor September 18, 1997. Filed with Secretary of State September 19, 1997.]

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

SECTION 1. Section 190 of the Penal Code, as amended by Chapter 598 of the Statutes of 1996, is amended to read:

190. (a) Every person guilty of murder in the first degree shall suffer death, confinement in the state prison for life without the possibility of parole, or confinement in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.

(b) Except as provided in subdivision (c), every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties.

(c) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of life without the possibility of parole if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties, and any of the following facts has been charged and found true:

(1) The defendant specifically intended to kill the peace officer.

(2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.7, on a peace officer.

(3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.

(4) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5.

(d) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

(e) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of a sentence imposed pursuant to this section. A person sentenced pursuant to this section shall not be released on parole prior to serving the minimum term of confinement prescribed by this section.

SEC. 2. Section 190 of the Penal Code, as amended by Proposition 179 at the June 7, 1994, statewide primary election, is amended to read:

190. (a) (1) Every person guilty of murder in the first degree shall suffer death, confinement in the state prison for life without the possibility of parole, or confinement in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

(2) Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.

(3) Except as provided in subdivision (b), Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 15, 20, or 25 years in the state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time.

(b) (1) Except as provided in subdivision (c), every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties.

(2) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of 25 years in the state prison when the person is guilty of murder in the second degree and the victim was a peace officer, as defined in this subdivision, and the person shall not be released prior to serving 25 years' confinement.

(c) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of life without the possibility of parole if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties, and any of the following facts has been charged and found true:

(1) The defendant specifically intended to kill the peace officer.

(2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.7, on a peace officer.

(3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.

(4) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5.

(d) (1) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

(2) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 20 years in the state prison when the person is guilty of murder in the second degree and is subject to this subdivision, but the person shall not otherwise be released on parole prior to that time.

SEC. 3. (a) Section 1 of this act shall become operative if either (1) no statewide special election is held in 1997, in which case Section 1 of this act shall be submitted to the voters at the next statewide election in lieu of Section 1 of Chapter 598 of the Statutes of 1996, or (2) a statewide special election is held in 1997 and Section 190 of the Penal Code, as amended by Chapter 598 of the Statutes of 1996, is approved by the voters at that election, in which case Section 2 of this act shall not become operative and shall not be submitted to the voters and Section 190 of the Penal Code, as amended by Chapter 598 of the Statutes of 1996, shall not be submitted to the voters at a subsequent statewide election. Sections 2 and 3 of Chapter 598 of the Statutes of 1996 shall become operative if either Section 1 of that chapter or Section 1 of this act is adopted by the voters.

(b) Section 2 of this act shall become operative only if Section 190 of the Penal Code, as amended by Chapter 598 of the Statutes of 1996, is rejected by the voters at a statewide special election held in 1997, in which case Section 1 of this act shall not become operative and shall not be submitted to the voters.

SEC. 4. This act affects an initiative statute and shall become effective only when submitted to, and approved by, the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution and in accordance with the provisions of Section 3 of this act.

CHAPTER 414

An act to amend Sections 4500.5, 4501, 4508, 4512, 4590, 4593, 4595, 4598, 4629, 4646, 4646.5, 4647, 4648, 4660, 4661, 4664, 4666, 4677, 4701.6, 4705, 4710.8, 4791, and 4803 of, to amend, repeal, and add Sections 4622 and 4625 of, and to add Sections 4414, 4418.3, 4434, 4519.5, 4542, 4602, 4640.8, and 4731 to, the Welfare and Institutions Code, relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 4414 is added to the Welfare and Institutions Code, to read:

4414. When convening any task force or advisory group, the department shall make its best effort to ensure representation by consumers and family members representing California's multicultural diversity.

SEC. 2. Section 4418.3 is added to the Welfare and Institutions Code, to read:

4418.3. (a) It is the intent of the Legislature to ensure that the transition process from a developmental center to a community living arrangement is based upon the individual's needs, developed through the individual program plan process, and ensures that needed services and supports will be in place at the time the individual moves.

(b) The development of the individual program plan shall be consistent with Sections 4646 and 4646.5. For the purpose of this section, the planning team shall include developmental center staff knowledgeable about the service and support needs of the consumer.

(c) As part of the transition process and during the development of the individual program plan, the consumer shall be afforded the opportunity to visit a variety of community living arrangements that could meet his or her needs. If the visits are not feasible, as determined by the planning team, a family member or other representative of the consumer may conduct the visits.

(d) Once the individual program plan is completed and providers of services and supports are identified and agreed to, pursuant to subdivision (b) of Section 4646.5, and no less than 15 days prior to the move, unless otherwise ordered by a court, a transition conference shall be held. Participants in the transition conference shall include, but not be limited to, the consumer, where appropriate the consumer's parents, legal guardian, conservator, or authorized representative, a regional center representative, a developmental center representative, and a representative of each provider of primary services and supports identified in the individual program plan. This meeting may take place in the catchment area to which the consumer is moving. If necessary, conferees may participate by telephone or video conference. The purpose of this conference shall be to ensure a smooth transition from the developmental center to the community.

(e) To ascertain that the individual program plan is being implemented, that planned services are being provided, and that the consumer and, where appropriate the consumer's parents, legal guardian, or conservator, are satisfied with the community living arrangement, the regional center shall schedule face-to-face reviews no less than once every 30 days for the first 90 days. Following the first 90 days, and following notification to the department, the regional

center may conduct these reviews less often as specified in the individual program plan.

SEC. 3. Section 4434 is added to the Welfare and Institutions Code, to read:

4434. (a) Notwithstanding preexisting rights to enforce the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)), it is the intent of the Legislature that the department ensure that the regional centers operate in compliance with federal and state law and regulation and provide services and supports to consumers in compliance with the principles and specifics of this division.

(b) The department shall take all necessary actions to support regional centers to successfully achieve compliance with this section and provide high quality services and supports to consumers and their families.

(c) The contract between the department and individual regional centers required by Chapter 5 (commencing with Section 4620) of Division 4.5 shall include a provision requiring each regional center to render services in accordance with applicable provisions of state laws and regulations. In the event that the department finds a regional center has violated this requirement, or whenever it appears that any regional center has engaged in or is about to engage in any act or practice constituting a violation of any provision of Division 4.5 (commencing with Section 4500) or any regulation adopted thereunder, the department shall promptly take the appropriate steps necessary to ensure compliance with the law, including actions authorized under Section 4632 or 4635. The department, as the director deems appropriate, may pursue other legal or equitable remedies for enforcement of the obligations of regional centers including, but not limited to, seeking specific performance of the contract between the department and the regional center or otherwise act to enforce compliance with Division 4.5 (commencing with Section 4500) or any regulation adopted thereunder.

(d) As part of its responsibility to monitor regional centers, the department shall collect and review printed materials issued by the regional centers, including, but not limited to, purchase of service policies and other policies and guidelines utilized by regional centers when determining the services needs of a consumer, instructions and training materials for regional center staff, board meeting agendas and minutes, and general policy and notifications provided to all providers and consumers and families. The department shall take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of Division 4.5 (commencing with Section 4500) or any regulation adopted thereunder.

SEC. 4. Section 4500.5 of the Welfare and Institutions Code is amended to read:

4500.5. The Legislature makes the following findings regarding the State of California's responsibility to provide services to persons with developmental disabilities, and the right of those individuals to receive services, pursuant to this division:

(a) Since the enactment of this division in 1977, the number of consumers receiving services under this division has substantially increased and the nature, variety, and types of services necessary to meet the needs of the consumers and their families have also changed. Over the years the concept of service delivery has undergone numerous revisions. Services that were once deemed desirable by consumers and families may now no longer be appropriate, or the means of service delivery may be outdated.

(b) As a result of the increased demands for services and changes in the methods in which those services are provided to consumers and their families, the value statements and principles contained in this division should be updated.

(c) It is the intent of the Legislature, in enacting the act that added this section, to update existing law; clarify the role of consumers and their families in determining service needs; and to describe more fully service options available to consumers and their families, pursuant to the individual program plan. Nothing in these provisions shall be construed to expand the existing entitlement to services for persons with developmental disabilities set forth in this division.

(d) It is the intent of the Legislature that the department monitor regional centers so that an individual consumer eligible for services and supports under this division receive the services and supports identified in his or her individual program plan.

SEC. 5. Section 4501 of the Welfare and Institutions Code is amended to read:

4501. The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors, and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance.

The complexities of providing services and supports to persons with developmental disabilities requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services and supports. A consumer of services and supports, and where appropriate, his or her parents, legal guardian, or conservator, shall have a leadership role in service design.

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent

feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program planning and implementation. The contributions made by parents and family members in support of their children and relatives with developmental disabilities are important and those relationships should also be respected and fostered, to the maximum extent feasible, so that consumers and their families can build circles of support within the community.

The Legislature finds that the mere existence or the delivery of services and supports is, in itself, insufficient evidence of program effectiveness. It is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served. It is further the intent of the Legislature that the Department of Developmental Services, through appropriate and regular monitoring activities, ensure that regional centers meet their statutory, regulatory, and contractual obligations in providing services to persons with developmental disabilities. The Legislature declares its intent to monitor program results through continued legislative oversight and review of requests for appropriations to support developmental disabilities programs.

SEC. 6. Section 4508 of the Welfare and Institutions Code is amended to read:

4508. Persons with developmental disabilities may be released from developmental centers for provisional placement, with parental consent in the case of a minor or with the consent of an adult person with developmental disabilities or with the consent of the guardian or conservator of the person with developmental disabilities, not to exceed twelve months, and shall be referred to a regional center for services pursuant to this division. Any person placed pursuant to this section shall have an automatic right of return

to the developmental center during the period of provisional placement.

SEC. 7. Section 4512 of the Welfare and Institutions Code is amended to read:

4512. As used in this part:

(a) "Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

(b) "Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies; advocacy assistance, including self-advocacy training, facilitation and peer advocates; assessment; assistance in locating a home; childcare; behavior training and behavior modification programs; camping; community integration services; community support; daily living skills training; emergency and crisis intervention; facilitating circles of support; habilitation; homemaker services; infant stimulation programs; paid roommates; paid neighbors; respite; short term out-of-home care; social skills training; specialized medical and

dental care; supported living arrangements; technical and financial assistance; travel training; training for parents of children with developmental disabilities; training for parents with developmental disabilities; vouchers; and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

(c) Notwithstanding subdivision (a) and (b), for any organization or agency receiving federal financial participation under the federal Developmental Disabilities Assistance and Bill of Rights Act, as amended "developmental disability" and "services for persons with developmental disabilities" means such terms as defined in the federal act to the extent required by federal law.

(d) "Consumer" means a person who has a disability that meets the definition of developmental disability set forth in subdivision (a).

(e) "Natural supports" means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships; friendships reflecting the diversity of the neighborhood and the community; associations with fellow students or employees in regular classrooms and workplaces; and associations developed through participation in clubs, organizations, and other civic activities.

(f) "Circle of support" means a committed group of community members, which may include family members, meeting regularly with an individual with developmental disabilities in order to share experiences, promote autonomy and community involvement, and assist the individual in establishing and maintaining natural supports. Such a circle of support generally includes a plurality of members who neither provide nor receive services or supports for persons with developmental disabilities and who do not receive payment for participation in the circle of support.

(g) "Facilitation" means the use of modified or adapted materials, special instructions, equipment, or personal assistance by an individual, such as assistance with communications, which will enable a consumer to understand and participate to the maximum extent possible in the decisions and choices which effect his or her life.

(h) "Family support services" means services and supports that are provided to a child with developmental disabilities or his or her family and that contribute to the ability of the family to reside together.

(i) "Voucher" means any authorized alternative form of service delivery in which the consumer or family member is provided with a payment, coupon, chit, or other form of authorization which enables the consumer or family member to choose his or her own service provider.

(j) "Planning team" means the individual with developmental disabilities, the parents or legally appointed guardian of a minor consumer, or the legally appointed conservator of an adult consumer, one or more regional center representatives, including the designated regional center service coordinator pursuant to subdivision (b) of Section 4640.7, and any individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer, or the legally appointed conservator of an adult consumer.

(k) "Stakeholder organizations" means statewide organizations representing the interests of consumers, family members, service providers, and statewide advocacy organizations.

SEC. 7.5. Section 4519.5 is added to the Welfare and Institutions Code, to read:

4519.5. (a) The Health and Welfare Agency shall contract with an independent consultant to conduct an evaluation of the policies and procedures used by the Department of Developmental Services and regional centers in providing services and supports to persons with developmental disabilities and for determining and monitoring the transfer of persons with developmental disabilities living in developmental centers to a community placement. The agency shall report to the appropriate policy committees and the fiscal committees of the Legislature by March 15, 1998, on the results of the evaluation and shall convene at least two public hearings to disseminate and discuss the evaluation results. The evaluation shall include the identification of any barriers to the provision of safe, secure, and stable community living arrangements for individuals with developmental disabilities.

(b) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to the Health and Welfare Agency to implement this section.

SEC. 8. Section 4542 is added to the Welfare and Institutions Code, to read:

4542. When convening any task force or advisory group, the state council shall make its best effort to ensure representation by consumers and family members representing California's multicultural diversity.

SEC. 8.5. Section 4590 of the Welfare and Institutions Code is amended to read:

4590. Area boards shall protect and advocate the rights of all persons in the area with developmental disabilities.

The area board shall have the authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the legal, civil, and service rights of persons who require services or who are receiving services in the area. In carrying out this responsibility, area boards may appoint a representative to assist the person in expressing his or her desires and in making decisions and advocating his or her needs, preferences, and choices, where the

person with developmental disabilities has no parent, guardian, or conservator legally authorized to represent him or her and the person has either requested the appointment of a representative or the rights or interests of the person, as determined by the area board, will not be properly protected or advocated without the appointment of a representative. Where there is no guardian or conservator, the person's choice, if expressed, including the right to reject the assistance of a representative, shall be honored. If the person does not express a preference, the order of preference for selection of the representative shall be the person's parent, involved family member, or a volunteer selected by the area board. In establishing these preferences, it is not the intent of the Legislature that parents or involved family members be required to be appointed guardian or conservator in order to be selected. Unless the consumer expresses otherwise or good cause otherwise exists, the request of the parents or involved family members to be appointed the representative shall be honored.

The area board, where appropriate pursuant to this section, shall appoint a representative to advocate the rights and protect the interests of a person residing in a developmental center for whom community placement is proposed pursuant to Section 4803.

The area board shall identify any evidence of the denial of these rights, shall inform the appropriate local, state, or federal officials of their findings, and shall assist these officials in eliminating all forms of discrimination against persons with developmental disabilities in housing, recreation, education, health and mental health care, employment, and other service programs available to the general population.

SEC. 9. Section 4593 of the Welfare and Institutions Code is amended to read:

4593. To the extent that resources are available, area boards shall review the policies and practices of publicly funded agencies that serve or may serve persons with developmental disabilities to determine if the programs are meeting their obligations under local, state, and federal statutes. A regional center may notify the area board when the regional center believes a publicly funded program is failing to meet its obligations in serving persons with developmental disabilities. The regional center may provide the area board with a comprehensive summary of the issues and the statute or regulation alleged to be violated. If the area board finds that the agency is not meeting its obligations, the area board shall inform, in writing, the director and the managing board of the noncomplying agency of its findings.

The agency shall, within 15 days respond, in writing, to the area board's findings. Following receipt of the agency's response, if the area board continues to find that the agency is not meeting its obligations, the area board shall pursue informal efforts to resolve the issue.

If, within 30 days of implementing informal efforts to resolve the issue, the area board continues to find that the agency is not meeting its obligations under local, state, or federal statutes, the area board shall conduct a public hearing to receive testimony on its findings.

If the problem has not been resolved within 30 days following the public hearing, the area board may provide the state council with its findings and may request authorization to initiate legal action. An area board shall not initiate legal action without prior authorization from the state council. However, the area board may assist any other person, agency, or organization that may pursue litigation related to the area board's findings.

SEC. 10. Section 4595 of the Welfare and Institutions Code is amended to read:

4595. The executive director of the state council shall review the findings developed pursuant to Section 4593 and may conduct additional factfinding investigations. The executive director shall report his or her findings to the state council within 30 days and shall recommend a course of action to be pursued by the council, the area board, or other state administrative or legislative officials.

The state council shall review the report of the executive director and shall take such action as it deems necessary to resolve the problem. If the council authorizes the area board to initiate legal action, the state council shall make available to the area board legal assistance through the legal services provisions of Public Law 94-103.

The state plan shall include an annual allotment of federal funds from Public Law 94-103 to be utilized for such legal assistance to area boards.

SEC. 11. Section 4598 of the Welfare and Institutions Code is amended to read:

4598. The Organization of Area Boards shall consist of the respective chairpersons or their designees from among the volunteer board members of the individual boards established under the provisions of this chapter. The purposes of this organization shall include activities to resolve common problems, improve coordination, exchange information between areas, and provide advice and recommendations to state agencies, the Legislature, and the state council.

SEC. 12. Section 4602 is added to the Welfare and Institutions Code, to read:

4602. When convening any task force or advisory group, the area boards shall make its best effort to ensure representation by consumers and family members representing the community's multicultural diversity.

SEC. 13. Section 4622 of the Welfare and Institutions Code is amended to read:

4622. (a) The state shall contract only with agencies, the governing boards of which conform to all of the following criteria:

(1) The governing board shall be composed of individuals with demonstrated interest in, or knowledge of, developmental disabilities.

(2) The membership of the governing board shall include persons with legal, management, public relations, and developmental disability program skills.

(3) The membership of the governing board shall include representatives of the various categories of disability to be served by the regional center.

(4) The governing board shall reflect the geographic and ethnic characteristics of the area to be served by the regional center.

(5) (A) A minimum of 50 percent of the members of the governing board shall be persons with developmental disabilities or their parents or legal guardians.

(B) By July 1, 1993, persons with developmental disabilities shall comprise no less than 5 percent of each governing board, or the governing board shall issue a finding to the department and the local area board as to why this is not achievable.

(C) By July 1, 1994, persons with developmental disabilities shall comprise no less than 10 percent of each governing board, or the governing board shall issue a finding to the department and the local area board as to why this is not achievable.

(D) By July 1, 1995, persons with developmental disabilities shall comprise no less than 15 percent of each governing board, or the governing board shall issue a finding to the department and the local area board as to why this is not achievable.

(E) By July 1, 1996, persons with developmental disabilities shall comprise no less than 25 percent of each governing board, or the governing board shall issue a finding to the department and the local area board as to why this is not achievable.

(F) The regional center shall provide necessary training and support to these board members to facilitate their understanding and participation.

(G) The governing board shall appoint a consumers' advisory committee composed of persons with developmental disabilities representing the various categories of disability served by the regional center. A consumers' advisory committee shall remain in existence at least until the regional center has achieved a governing board membership of which persons with developmental disabilities make up at least 25 percent.

(6) Members of the governing board shall not be permitted to serve longer than six consecutive years.

(7) The governing board shall appoint an advisory committee composed of a wide variety of persons representing the various categories of providers from which the regional center purchases client services. The advisory committee shall provide advice, guidance, recommendations, and technical assistance to the regional center board in order to assist the regional center in carrying out its

mandated functions. The advisory committee shall designate one of its members to serve as a member of the regional center board.

(8) The governing board shall annually review the performance of the director of the regional center.

(9) No member of the board who is an employee or member of the governing board of a provider from which the regional center purchases client services shall do any of the following:

(A) Serve as an officer of the board.

(B) Vote on any fiscal matter affecting the purchase of services from any regional center provider.

(C) Vote on any issue other than as described in subparagraph (B), in which the member has a financial interest, as defined in Section 87103 of the Government Code, and determined by the regional center board. The member shall provide a list of his or her financial interests, as defined in Section 87103, to the regional center board.

(b) Nothing in this section shall prevent the appointment to a regional center governing board of a person who meets the criteria for more than one of the categories listed above.

(c) 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. 13.5. Section 4622 is added to the Welfare and Institutions Code, to read:

4622. The state shall contract only with agencies, the governing boards of which conform to all of the following criteria:

(a) The governing board shall be composed of individuals with demonstrated interest in, or knowledge of, developmental disabilities.

(b) The membership of the governing board shall include persons with legal, management, public relations, and developmental disability program skills.

(c) The membership of the governing board shall include representatives of the various categories of disability to be served by the regional center.

(d) The governing board shall reflect the geographic and ethnic characteristics of the area to be served by the regional center.

(e) A minimum of 50 percent of the members of the governing board shall be persons with developmental disabilities or their parents or legal guardians. No less than 25 percent of the members of the governing board shall be persons with developmental disabilities.

(f) Members of the governing board shall not be permitted to serve more than six years within each eight-year period.

(g) The regional center shall provide necessary training and support to these board members to facilitate their understanding and participation. As part of its monitoring responsibility, the department

shall review and approve the method by which training and support are provided to board members to ensure maximum understanding and participation by board members.

(h) The governing board may appoint a consumers' advisory committee composed of persons with developmental disabilities representing the various categories of disability served by the regional center.

(i) The governing board shall appoint an advisory committee composed of a wide variety of persons representing the various categories of providers from which the regional center purchases client services. The advisory committee shall provide advice, guidance, recommendations, and technical assistance to the regional center board in order to assist the regional center in carrying out its mandated functions. The advisory committee shall designate one of its members to serve as a member of the regional center board.

(j) The governing board shall annually review the performance of the director of the regional center.

(k) No member of the board who is an employee or member of the governing board of a provider from which the regional center purchases client services shall do any of the following:

(1) Serve as an officer of the board.

(2) Vote on any fiscal matter affecting the purchase of services from any regional center provider.

(3) Vote on any issue other than as described in paragraph (2), in which the member has a financial interest, as defined in Section 87103 of the Government Code, and determined by the regional center board. The member shall provide a list of his or her financial interests, as defined in Section 87103, to the regional center board.

Nothing in this section shall prevent the appointment to a regional center governing board of a person who meets the criteria for more than one of the categories listed above.

This section shall become operative on July 1, 1999.

SEC. 14. Section 4625 of the Welfare and Institutions Code is amended to read:

4625. The department shall not contract with any new regional center contracting agency unless the governing board of the agency is composed of individuals as specified in paragraphs (1) to (6), inclusive, of Section 4622.

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. 14.5. Section 4625 is added to the Welfare and Institutions Code, to read:

4625. The department shall not contract with any new regional center contracting agency unless the governing board of the agency is composed of individuals as specified in subdivisions (a) to (f), inclusive, of Section 4622.

This section shall become operative on July 1, 1999.

SEC. 15. Section 4629 of the Welfare and Institutions Code is amended to read:

4629. (a) The state shall enter into five-year contracts with regional centers, subject to the annual appropriation of funds by the Legislature.

(b) The contracts shall include a provision requiring each regional center to render services in accordance with applicable provision of state laws and regulations.

(c) The contracts shall include annual performance objectives that shall do both of the following:

(1) Be specific, measurable, and designed to do all of the following:

(A) Assist consumers to achieve life quality outcomes.

(B) Achieve meaningful progress above the current baselines.

(C) Develop services and supports identified as necessary to meet identified needs.

(2) Be developed through a public process that includes, but is not limited to, all of the following:

(A) Providing information, in an understandable form, to the community about regional center services and supports, including budget information and baseline data on services and supports and regional center operations.

(B) Conducting a public meeting where participants can provide input on performance objectives and using focus groups or surveys to collect information from the community.

(C) Circulating a draft of the performance objectives to the community for input prior to presentation at a regional center board meeting where additional public input will be taken and considered before adoption of the objectives.

(d) Each contract with a regional center shall specify steps to be taken to ensure contract compliance, including, but not limited to, all of the following:

(1) Incentives that encourage regional centers to meet or exceed performance standards.

(2) Levels of probationary status for regional centers that do not meet, or are at risk of not meeting, performance standards. The department shall require that corrective action be taken by any regional center which is placed on probation. Corrective action may include, but is not limited to, mandated consultation with designated representatives of the Association of Regional Center Agencies or a management team designated by the department, or both. The implementation of corrective action shall occur in a timely manner and shall be monitored by the department.

(e) In order to evaluate the regional center's compliance with its contract performance objectives, the department shall do both of the following:

(1) Annually assess each regional center's achievement of its previous year's objectives and make the assessment, including

baseline data and performance objectives of the individual regional centers, available to the public. The department may make a special commendation of the regional centers that have best engaged the community in the development of contract performance objectives and have made the most meaningful progress in meeting or exceeding contract performance objectives.

(2) Monitor the activities of the regional center to ensure compliance with the provisions of its contracts, including, but not limited to, reviewing all of the following:

(A) The regional center's public process for compliance with the procedures sets forth in paragraph (2) of subdivision (c).

(B) Each regional center's performance objectives for compliance with the criteria set forth in paragraph (1) of subdivision (c).

(C) Any public comments on regional center performance objectives sent to the department or to the regional centers, and soliciting public input on the public process and final performance standards.

(f) The renewal of each contract shall be contingent upon compliance with the contract including, but not limited to, the performance objectives, as determined through the department's evaluation.

SEC. 16. Section 4640.8 is added to the Welfare and Institutions Code, to read:

4640.8. When convening any task force or advisory group, a regional center shall make its best effort to ensure representation by consumers and family members representing the community's multicultural diversity.

SEC. 17. Section 4646 of the Welfare and Institutions Code is amended to read:

4646. (a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, shall have the opportunity to actively participate in the development of the plan.

(c) An individual program plan shall be developed for any person who, following intake and assessment, is found to be eligible for regional center services. These plans shall be completed within 60 days of the completion of the assessment. At the time of intake, the regional center shall inform the consumer and, where appropriate, his or her parents, legal guardian or conservator, of the services available through the local area board and the protection and advocacy agency designated by the Governor pursuant to federal law, and shall provide the address and telephone numbers of those agencies.

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

(e) Regional centers shall comply with the request of a consumer, or where appropriate, the request of his or her parents, legal guardian, or conservator, that a designated representative receive written notice of all meetings to develop or revise his or her individual program plan and of all notices sent to the consumer pursuant to Section 4710. The designated representative may be a parent or family member.

(f) If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at a program plan meeting, then a subsequent program plan meeting shall be convened within 15 days, or later at the request of the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative or when agreed to by the planning team. Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative.

(g) An authorized representative of the regional center and the consumer or, where appropriate, his or her parents, legal guardian, or conservator, shall sign the individual program plan prior to its implementation. If the consumer or, where appropriate, his or her parents, legal guardian, or conservator, does not agree with all components of the plan, they may indicate that disagreement on the plan. Disagreement with specific plan components shall not prohibit the implementation of services and supports agreed to by the consumer or, where appropriate, his or her parents, legal guardian, or conservator. If the consumer or, where appropriate, his or her parents, legal guardian, or conservator, does not agree with the plan

in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701.

SEC. 18. Section 4646.5 of the Welfare and Institutions Code is amended to read:

4646.5. (a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

(3) When developing individual program plans for children, regional centers shall be guided by the principles, process, and services and support parameters set forth in Section 4685.

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

(5) A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation.

(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, or conservator requests an individual program plan review, the individual program shall be reviewed within 30 days after the request is submitted.

(c) (1) The department, with the participation of representatives of a statewide consumer organization, the Association of Regional Center Agencies, an organized labor organization representing service coordination staff, and the Organization of Area Boards shall prepare training material and a standard format and instructions for the preparation of individual program plans, which embodies an approach centered on the person and family.

(2) Each regional center shall use the training materials and format prepared by the department pursuant to paragraph (1).

(3) The department shall annually review a random sample of individual program plans at each regional center to assure that these plans are being developed and modified in compliance with Section 4646 and this section.

SEC. 19. Section 4647 of the Welfare and Institutions Code is amended to read:

4647. (a) Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

(b) The regional center shall assign a service coordinator who shall be responsible for implementing, overseeing, and monitoring each individual program plan. The service coordinator may be an employee of the regional center or may be a qualified individual or employee of an agency with whom the regional center has contracted to provide service coordination services, or persons described in Section 4647.2. No person shall continue to serve as a service coordinator for any individual program plan unless there is agreement by all parties that the person should continue to serve as service coordinator.

(c) Where appropriate, a consumer or the consumer's parents or other family members, legal guardian, or conservator, may perform

all or part of the duties of the service coordinator described in this section if the regional center director agrees and it is feasible.

(d) If any person described in subdivision (c) is designated as the service coordinator, that person shall not deviate from the agreed-upon program plan and shall provide any reasonable information and reports required by the regional center director.

(e) If any person described in subdivision (c) is designated as the service coordinator, the regional center shall provide ongoing information and support as necessary, to assist the person to perform all or part of the duties of service coordinator.

SEC. 20. Section 4648 of the Welfare and Institutions Code is amended to read:

4648. In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, determines will best accomplish all or any part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency

vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors and the individual or agency requesting vendorization.

(C) Regulations shall include, but not be limited to: the vendor application process, and the basis for accepting or denying an application; the qualification and requirements for each category of services that may be provided to a regional center consumer through a vendor; requirements for emergency vendorization; procedures for termination of vendorization; the procedure for an individual or an agency to appeal any vendorization decision made by the department or regional center.

(4) Notwithstanding subparagraph (B), a regional center may contract or issue a voucher for services and supports provided to a consumer or family at a cost not to exceed the maximum rate of payment for that service or support established by the department. If a rate has not been established by the department, the regional center may, for an interim period, contract for a specified service or support with, and establish a rate of payment for, any provider of the service or support necessary to implement a consumer's individual program plan. Contracts may be negotiated for a period of up to three years, with annual review and subject to the availability of funds.

(5) In order to ensure the maximum flexibility and availability of appropriate services and supports for persons with developmental disabilities, the department shall establish and maintain an equitable system of payment to providers of services and supports identified as necessary to the implementation of a consumers' individual program plan. The system of payment shall include provision for a rate to ensure that the provider can meet the special needs of consumers and provide quality services and supports in the least restrictive setting as required by law.

(6) The regional center and the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

(C) Where appropriate, the existence of licensing, accreditation, or professional certification.

(D) The cost of providing services or supports of comparable quality by different providers, if available.

(E) The consumer's or, where appropriate, the parents, legal guardian, or conservator of a consumer's choice of providers.

(7) No service or support provided by any agency or individual shall be continued unless the consumer or, where appropriate, his or her parents, legal guardian, or conservator, is satisfied and the regional center and the consumer or, when appropriate, the person's parents or legal guardian or conservator agree that planned services and supports have been provided, and reasonable progress toward objectives have been made.

(8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

(9) (A) A regional center may, directly or through an agency acting on behalf of the center, provide placement in, purchase of, or follow-along services to persons with developmental disabilities in, appropriate community living arrangements, including, but not limited to, support service for consumers in homes they own or lease, foster family placements, health care facilities, and licensed community care facilities. In considering appropriate placement alternatives for children with developmental disabilities, approval by the child's parent or guardian shall be obtained before placement is made.

(B) Each person with developmental disabilities placed by the regional center in a community living arrangement shall have the rights specified in this division. These rights shall be brought to the person's attention by any means the director may designate by regulation.

(C) Consumers are eligible to receive supplemental services including, but not limited to, additional staffing, pursuant to the process described in subdivision (d) of Section 4646. Necessary additional staffing that is not specifically included in the rates paid to the service provider may be purchased by the regional center if the additional staff are in excess of the amount required by regulation and the individual's planning team determines the additional services are consistent with the provisions of the individual program plan. Additional staff should be periodically reviewed by the planning team for consistency with the individual program plan objectives in order to determine if continued use of the additional staff is necessary and appropriate and if the service is producing outcomes consistent with the individual program plan. Regional centers shall monitor programs to ensure that the additional staff is being provided and utilized appropriately.

(10) Emergency and crisis intervention services including, but not limited to, mental health services and behavior modification services, may be provided, as needed, to maintain persons with developmental disabilities in the living arrangement of their own choice. Crisis services shall first be provided without disrupting a

person's living arrangement. If crisis intervention services are unsuccessful, emergency housing shall be available in the person's home community. If dislocation cannot be avoided, every effort shall be made to return the person to his or her living arrangement of choice, with all necessary supports, as soon as possible.

(11) Among other service and support options, planning teams shall consider the use of paid roommates or neighbors, personal assistance, technical and financial assistance, and all other service and support options which would result in greater self-sufficiency for the consumer and cost-effectiveness to the state.

(12) When facilitation as specified in an individual program plan requires the services of an individual, the facilitator shall be of the consumer's choosing.

(13) The community support may be provided to assist individuals with developmental disabilities to fully participate in community and civic life, including, but not limited to, programs, services, work opportunities, business, and activities available to persons without disabilities. This facilitation shall include, but not be limited to, any of the following:

(A) Outreach and education to programs and services within the community.

(B) Direct support to individuals which would enable them to more fully participate in their community.

(C) Developing unpaid natural supports when possible.

(14) Other services and supports may be provided as set forth in Sections 4685, 4686, 4687, 4688, and 4689, when necessary.

(b) (1) Advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities as established in this division.

(2) Whenever the advocacy efforts of a regional center to secure or protect the civil, legal, or service rights of any of its consumers prove ineffective, the regional center or the person with developmental disabilities or his or her parents, legal guardian, or other representative may request the area board to initiate action under the provisions defining area board advocacy functions established in this division.

(c) The regional center may assist consumers and families directly, or through a provider, in identifying and building circles of support within the community.

(d) In order to increase the quality of community services and protect consumers, the regional center shall, when appropriate, take either of the following actions:

(1) Identify services and supports that are ineffective or of poor quality and provide or secure consultation, training, or technical assistance services for any agency or individual provider to assist that agency or individual provider in upgrading the quality of services or supports.

(2) Identify providers of services or supports that may not be in compliance with local, state, and federal statutes and regulations and notify the appropriate licensing or regulatory authority, or request the area board to investigate the possible noncompliance.

(e) When necessary to expand the availability of needed services of good quality, a regional center may take actions that include, but are not limited to, the following:

(1) Soliciting an individual or agency by requests for proposals or other means, to provide needed services or supports not presently available.

(2) Requesting funds from the Program Development Fund, pursuant to Section 4677, or community placement plan funds designated from that fund, to reimburse the startup costs needed to initiate a new program of services and supports.

(3) Using creative and innovative service delivery models, including, but not limited to, natural supports.

(f) Except in emergency situations, a regional center shall not provide direct treatment and therapeutic services, but shall utilize appropriate public and private community agencies and service providers to obtain those services for its consumers.

(g) Where there are identified gaps in the system of services and supports or where there are identified consumers for whom no provider will provide services and supports contained in his or her individual program plan, the department may provide the services and supports directly.

SEC. 21. Section 4660 of the Welfare and Institutions Code is amended to read:

4660. All meetings of the board of directors of each regional center shall be scheduled, open, and public, and all persons shall be permitted to attend any meeting, except as otherwise provided in this section. Regional center board meetings shall be held in accordance with all of the following provisions:

(a) Each regional center shall provide a copy of this article to each member of the regional center governing board upon his or her assumption of board membership.

(b) As used in this article, board meetings include meetings conducted by any committee of the governing board which exercises authority delegated to it by that governing board. However, board meetings shall not be deemed to include board retreats planned solely for educational purposes.

(c) At each regional center board meeting, time shall be allowed for public input on all properly noticed agenda items prior to board action on that item. Time shall be allowed for public input on any issue not included on the agenda.

(d) Any person attending an open and public meeting of a regional center shall have the right to record the proceedings on a tape recorder, video recorder, or other sound, visual, or written transcription recording device, in the absence of a reasonable finding

of the regional center governing board that such recording constitutes, or would constitute, a disruption of the proceedings.

SEC. 22. Section 4661 of the Welfare and Institutions Code is amended to read:

4661. (a) Regional centers shall mail notice of their meetings to any person who requests notice in writing. Notice shall be mailed at least seven days in advance of each meeting. The notice shall include the date, time, and location of, and a specific agenda for, the meeting, which shall include an identification of all substantive topic areas to be discussed, and no item shall be added to the agenda subsequent to the provision of this notice. The notice requirement shall not preclude the regional center board from taking action on any urgent request made by the department, not related to purchase of service reductions, for which the board makes a specific finding that notice could not have been provided at least seven days before the meeting, or on new items brought before the board at meetings by members of the public.

(b) The regional center shall maintain all recordings and written comments submitted as testimony on agenda items for no less than two years. These materials shall be made available for review by any person, upon request.

(c) Any action taken by a board that is found by a court of competent jurisdiction to have substantially violated any provision of this article shall be deemed null and void.

SEC. 23. Section 4664 of the Welfare and Institutions Code is amended to read:

4664. The governing board of a regional center may hold a closed session regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the regional center in the litigation. Litigation shall be considered pending when any of the following circumstances exist:

(a) An adjudicatory proceeding to which the regional center is a party has been initiated formally.

(b) A point has been reached where, based upon existing facts and circumstances and the advice of legal counsel, it is determined that there is a significant exposure to litigation against the regional center.

(c) Based on existing facts and circumstances, the regional center has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session pursuant to this section, the regional center governing board shall state publicly to which subdivision it is pursuant.

SEC. 24. Section 4666 of the Welfare and Institutions Code is amended to read:

4666. No regional center shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, sex, or disability.

SEC. 25. Section 4677 of the Welfare and Institutions Code is amended to read:

4677. (a) All parental fees collected by or for regional centers shall be remitted to the State Treasury to be deposited in the Developmental Disabilities Program Development Fund, which is hereby created and hereinafter called the Program Development Fund. The purpose of the Program Development Fund shall be to provide resources needed to initiate new programs, consistent with approved priorities for program development in the state plan.

In no event shall an allocation from the Program Development Fund be granted for more than 24 months.

(b) The State Council on Developmental Disabilities shall, not less than once every three years, request from all regional centers information on the types and amounts of services and supports needed, but currently unavailable. Based on the information provided by the regional centers and other agencies, the State Council on Developmental Disabilities shall develop an assessment of the level of need for new community services and support, and make that assessment available to the public. This needs assessment shall be included in the state plan. The State Council on Developmental Disabilities, in consultation with the State Department of Developmental Services, shall make a recommendation to the Department of Finance as to the level of funding for program development to be included in the Governor's Budget, based upon this needs assessment.

(c) Parental fee schedules shall be evaluated pursuant to Section 4784 and adjusted annually by the department, with the approval of the state council. Fees for out-of-home care shall bear an equitable relationship to the cost of the care and the ability of the family to pay.

(d) In addition to parental fees and General Fund appropriations, the Program Development Fund may be augmented by federal funds available to the state for program development purposes, when these funds are allotted to the Program Development Fund in the state plan. The Program Development Fund is hereby appropriated to the department, and subject to any allocations which may be made in the annual Budget Act. In no event shall any of these funds revert to the General Fund.

(e) The department may allocate funds from the Program Development Fund for any legal purpose, provided that requests for proposals and allocations are approved by the state council in consultation with the department, and are consistent with the priorities for program development in the state plan. Allocations from the Program Development Fund shall take into consideration the following factors:

(1) The future fiscal impact of the allocations on other state supported services and supports for persons with developmental disabilities.

(2) The information on priority services and supports needed, but currently unavailable, submitted by the regional centers.

Consistent with the level of need as determined in the state plan, excess parental fees may be used for purposes other than new program development only when specifically appropriated to the State Department of Developmental Services for those purposes.

(f) Under no circumstances shall the deposit of federal moneys into the Program Development Fund be construed as requiring the State Department of Developmental Services to comply with a definition of "developmental disabilities" and "services for persons with developmental disabilities" other than as specified in subdivisions (a) and (b) of Section 4512 for the purposes of determining eligibility for developmental services or for allocating parental fees and state general funds deposited in the Program Development Fund.

SEC. 26. Section 4701.6 of the Welfare and Institutions Code is amended to read:

4701.6. "Authorized representative" means the conservator of an adult, the guardian, conservator, or parent or person having legal custody of a minor claimant, or a person or agency appointed pursuant to Section 4590 or subdivision (e) of Section 4705 and authorized in writing by the claimant or by the legal guardian, conservator, or parent or person having legal custody of a minor claimant to act for or represent the claimant under this chapter.

SEC. 27. Section 4705 of the Welfare and Institutions Code is amended to read:

4705. (a) Every service agency shall, as a condition of continued receipt of state funds, have an agency fair hearing procedure for resolving conflicts between the service agency and recipients of, or applicants for, service. The State Department of Developmental Services shall promulgate regulations to implement this chapter by October 1, 1983, which shall be binding on every service agency.

Any public or private agency receiving state funds for the purpose of serving persons with developmental disabilities not otherwise subject to the provisions of this chapter shall, as a condition of continued receipt of state funds, adopt and periodically review a written internal grievance procedure.

(b) An agency that employs a fair hearing procedure mandated by any other statute shall be considered to have an approved procedure for purposes of this chapter.

(c) The service agency's fair hearing procedure shall be stated in writing, in English and any other language that may be appropriate to the needs of the consumers of the agency's service. A copy of the procedure and a copy of the provisions of this chapter shall be prominently displayed on the premises of the service agency.

(d) All recipients and applicants, and persons having legal responsibility for recipients or applicants, shall be informed verbally of, and shall be notified in writing in a language which they

comprehend of, the service agency's fair hearing procedure when they apply for service, when they are denied service, and when notice of service modification is given pursuant to Section 4710.

(e) If, in the opinion of any person, the rights or interests of a claimant who has not personally authorized a representative will not be properly protected or advocated, the local area board and the clients' right advocate assigned to the regional center shall be notified, and the area board may appoint a person or agency as representative, pursuant to Section 4590, to assist the claimant in the appeals procedure. The appointment shall be in writing to the authorized representative and a copy of the appointment shall be immediately mailed to the service agency director.

SEC. 28. Section 4710.8 of the Welfare and Institutions Code is amended to read:

4710.8. (a) At the informal meeting, the claimant shall have the rights stated pursuant to subdivision (a) of Section 4710.6.

(b) The informal meeting shall be held at a time and place reasonably convenient to the claimant and the authorized representative.

(c) The informal meeting shall be conducted in the English language. However, if the claimant, the claimant's guardian or conservator, the parent of a minor claimant, or the authorized representative does not understand English, an interpreter shall be provided who is competent and acceptable to both the person requiring the interpreter and the service agency director or the director's designee. Any cost of an interpreter shall be borne by the service agency.

(d) The notification of the decision shall state that the decision shall go into effect 10 days after receipt of the decision by the claimant or authorized representative and that it shall be the final administrative decision unless the claimant appeals to the responsible state agency. The notification shall state that if the claimant or the authorized representative disagrees with the decision of the service agency director or designee, he or she may appeal the decision by submitting a written request for a fair hearing to the service agency within 10 days of the receipt of the decision of the service agency director.

(e) Nothing in this section shall preclude a process of mediation mutually agreed to by both parties. That mediation shall not affect the time limitations set forth in this chapter.

SEC. 29. Section 4731 is added to the Welfare and Institutions Code, to read:

4731. (a) Each consumer or any representative acting on behalf of any consumer, who believes that any right to which the consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center, developmental center, or service provider, may pursue a complaint as provided in this section.

(b) Initial referral of any complaint taken pursuant to this section shall be to the clients' rights advocate assigned to the regional center from which the consumer receives case management services. If the consumer resides in a state developmental center, the complaint shall be made to the clients' rights advocate assigned to that state developmental center. The clients' rights advocate shall, within 10 working days of receiving a complaint, investigate the complaint and send a written proposed resolution to the complainant and to the regional center, developmental center, or service provider.

(c) If the complainant expresses dissatisfaction with the action taken or proposed by the clients' rights advocate, the complainant shall be referred, by the clients' rights advocate, within five working days, to the director of the state developmental center or of the regional center.

(d) If the complaint is not resolved to the satisfaction of the complainant within ten working days of receipt by the director of the state developmental center or regional center, it shall be referred by that director to the State Department of Developmental Services. The director shall, within 45 days of receiving a complaint, issue a written administrative decision and send a copy of the decision to the complainant.

(e) The department shall annually compile the number of complaints filed, by each regional center catchment area, the subject matter of each complaint, and a summary of each decision. Copies shall be made available to any person upon request.

(f) This section shall not be used to resolve disputes concerning the nature, scope, or amount of services and supports that should be included in an individual program plan, for which there is an appeal procedure established in this division, or disputes regarding rates or audit appeals for which there is an appeal procedure established in regulations. Those disputes shall be resolved through the appeals procedure established by this division or in regulations.

(g) All consumers or, where appropriate, their parents, legal guardian, conservator, or authorized representative, shall be notified in writing in a language which they comprehend, of the right to file a complaint pursuant to this section when they apply for services from a regional center or are admitted to a developmental center, and at each regularly scheduled planning meeting.

(h) This section shall become operative on January 1, 1998.

SEC. 30. Section 4791 of the Welfare and Institutions Code is amended to read:

4791. (a) The Legislature finds that when the state faces an unprecedented fiscal crisis, the services set forth in this division are necessary to enable persons with developmental disabilities to live in the least restrictive setting.

(b) In order to ensure that services to eligible consumers are available throughout the fiscal year, regional centers shall administer

their contracts within the level of funding available within the annual Budget Act.

(c) To carry out the intent of this provision, and notwithstanding Chapter 5 and Section 4643, each regional center contract shall include provisions which ensure the regional center will provide services to eligible consumers within the funds available in the contract throughout the fiscal year. Regional centers shall implement innovative, cost-effective methods of services delivery, which may include, but not be limited to, the use of vouchers, consumer or parent services coordinators, increased administrative efficiencies, and alternative sources of payment for services.

(d) In the event of an unallocated reduction, the Budget Act of each fiscal year shall determine the distribution of any unallocated reduction within the regional center budget item.

(e) In the event of an unallocated reduction in the regional center budget, or if an individual regional center notifies the department that the regional center will be unable to provide services and supports to eligible consumers throughout the fiscal year within the level of funding available in their contract, the following shall apply:

(1) The department shall provide the regional center or regional centers with guidelines, technical assistance, and a variety of options for reducing operations and purchase of service costs.

(2) Within 30 days of the enactment of the Budget Act or after the date a regional center notifies the department of a projected deficit in its purchase of services budget, each impacted regional center shall develop and submit a plan to the department describing in detail how it intends to absorb any unallocated reduction and shall achieve savings necessary to provide services to eligible consumers throughout the fiscal year within the limitations of the funds allocated. Prior to adopting the plan, each regional center shall hold a public hearing in order to receive comment on the plan. The regional centers shall provide notice to the community at least 10 days in advance of the public hearing. The regional center shall summarize and respond to the public testimony in their plan.

(3) The plan submitted to the department may include, but not be limited to:

(A) Innovative and cost-effective methods of services delivery that include, but are not limited to, the use of vouchers; the use of consumers and parents as service coordinators; alternative methods of case management; the use of volunteer teams, made up of consumers, parents, other family members, and advocates, to conduct the monitoring activities described in Section 4648.1; increased administrative efficiencies; alternative sources of payment for services; use of available assessments in determining eligibility; and alternative nonresidential rate methodologies or service delivery models, or both. In addition, the regional center shall take into account, in identifying the consumer's service needs, the family's

responsibility for providing similar services to a child without disabilities.

(B) The maximization of all alternative funding sources, including federal and generic funding sources.

(C) Assurances that all other operations expenditure reductions are considered before any reductions are made in nonsupervisory, service coordination staff.

(4) The regional centers shall implement components of their plans upon approval of the department. The department shall review and approve, or require modification of portions of the regional centers' plan, within 30 days of receipt of the plan. If the required modification is significant, the department shall require the regional center to hold an additional public hearing to review and comment on the modification.

(f) Notwithstanding any other provision of law, in any fiscal year in which an unallocated reduction is made in the regional center budget, the director may adopt, amend, repeal, or suspend regulations as necessary to permit program flexibility and allow regional centers to achieve cost savings or innovative approaches to service delivery, including, but not limited, to those specified in subparagraph (A) of paragraph (1) of subdivision (e) without adversely affecting consumer health and safety or placing persons with disabilities in a more restrictive environment. Furthermore, any such regulatory change shall not authorize categorical reductions; changes in service delivery shall have an exemption process. It is the intent of the Legislature that any such action be deemed an emergency necessary for the immediate preservation of the public peace, health, and safety, or general welfare for purposes of subdivision (b) of Section 11346.1 of the Government Code.

(g) Notwithstanding any other provision of law, the State Director of the Department of Developmental Services may require one or more regional centers to take any actions he or she determines to be necessary to ensure reductions are made in the regional center operations budget, including, but not limited to, the following:

(1) Require a regional center to centralize billing and other fiscal and administrative functions.

(2) Require a regional center to reduce office space through the decentralization of service coordinators by allowing service coordinators to work in their homes and in community-based programs.

(3) Require a regional center to freeze or reduce levels of pay for administrative and managerial employees.

(4) Require a regional center to contract for specified functions currently conducted directly by the regional center.

(5) Require regional centers to seek Medi-Cal provider status for regional center staff performing reimbursable activities.

(h) Notwithstanding any other provisions of law, the director may terminate a regional center contract if he or she determines that the

regional center is unable or unwilling to make the necessary reductions in its operations budget or if the action is necessary to avoid reductions in the purchase of services for regional center consumers.

(i) Notwithstanding any other provisions of law, the department may directly operate a regional center after the termination of a contract.

(j) If the director determines that regional centers cannot provide services throughout the fiscal year within the funds provided by the Budget Act, he or she shall immediately report to the Governor and the appropriate fiscal committees of the Legislature and recommend actions to secure additional funds or reduce expenditures, including any actions which require the suspension of the entitlement to service set forth in this division.

(k) Developing and implementing the plan shall be considered a contractual obligation pursuant to Section 4635 of the Welfare and Institutions Code. Accordingly, the department shall make reasonable efforts to assist regional centers in fulfilling their contractual obligations and provide technical assistance, as necessary. In addition, a regional center's failure to develop and implement the plan may be considered grounds for contract termination or nonrenewal. If at any time the director of the department determines that a regional center's plan does not adequately address a funding deficiency during the fiscal year, the director may require the use of operational funds to reduce the deficiency in purchase of services funds.

(*l*) This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 31. Section 4803 of the Welfare and Institutions Code is amended to read:

4803. If a regional center recommends that a person be admitted to a community care facility or health facility as a developmentally disabled resident, the employee or designee of the regional center responsible for making such recommendations shall certify in writing that neither the person recommended for admission to a community care facility or health facility, nor the parent of a minor or conservator of an adult, if appropriate, nor the person or agency appointed pursuant to Section 4590 or subdivision (e) of Section 4705 has made an objection to the admission to the person making the recommendation. The regional center shall transmit the certificate, or a copy thereof, to the community care facility or health facility.

A community care facility or health facility shall not admit any adult as a developmentally disabled patient on recommendation of a regional center unless a copy of the certificate has been transmitted pursuant to this section.

Any person who, knowing that objection to a community care facility or health facility admission has been made, certifies that no objection has been made, shall be guilty of a misdemeanor.

Objections to proposed placements shall be resolved by a fair hearing procedure pursuant to Section 4700.

SEC. 32. 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 health and safety of persons with developmental disabilities being served in state developmental centers and in the community at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 415

An act to amend Sections 21080.4, 21080.14, and 21153 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 21080.4 of the Public Resources Code is amended to read:

21080.4. (a) If a lead agency determines that an environmental impact report is required for a project, the lead agency shall immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency and to those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California. Upon receipt of the notice, each responsible agency and each public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency or public agency in connection with the proposed project and which, pursuant to the requirements of this division, shall be included in the environmental impact report. The information shall be specified in writing and shall be communicated to the lead agency by certified mail or equivalent procedure not later than 30 days after the date of receipt of the notice of the lead agency's determination. The lead agency shall request similar guidance from appropriate federal agencies.

(b) To expedite the requirements of subdivision (a), the lead agency or any responsible agency or public agency having

jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California may request one or more meetings between representatives of those agencies for the purpose of assisting the lead agency to determine the scope and content of the environmental information that any of those responsible agencies or public agencies may require. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant. The meetings shall be convened by the lead agency as soon as possible, but not later than 30 days after the date that the meeting was requested.

(c) To expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies, public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, and any federal agencies that have responsibility for carrying out or approving a proposed project. In the case of a project described in subdivision (c) of Section 21065, such a request may also be made by the project applicant.

(d) If a state agency is a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, subject to the requirements of subdivision (a), the Office of Planning and Research shall ensure that the information required by subdivision (a) is transmitted to the lead agency, and that affected agencies are notified regarding meetings to be held upon request pursuant to subdivision (b), within the required time period.

SEC. 2. Section 21080.14 of the Public Resources Code is amended to read:

21080.14. (a) Except as provided in subdivision (c), this division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of not more than 100 units in an urbanized area that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years, or that is affordable to low- and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households at monthly housing costs as determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, the developer provides sufficient legal commitments to ensure continued availability of units for the lower income households for 30 years as provided in

paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, and the development project meets all of the following requirements:

(1) The development project is consistent with the jurisdiction's general plan or any applicable specific plan or local coastal program as it existed on the date that the application was deemed complete.

(2) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the date that the application was deemed complete, unless the zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.

(3) The project site is an infill site that has been previously developed for urban uses, or the immediately contiguous properties surrounding the project site are, or previously have been, developed for urban uses.

(4) The project site is not more than five acres in area.

(5) The project site can be adequately served by utilities.

(6) The project site has no value as a wildlife habitat.

(7) The project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(8) The project site is subject to an assessment prepared by a California registered environmental assessor to determine the presence of hazardous contaminants on the site and the potential for exposure of site occupants to significant health hazards from nearby properties and activities. If hazardous contaminants on the site are found, the contaminants shall be removed or any significant effects of those contaminants shall be mitigated to a level of insignificance. If the potential for exposure to significant health hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance.

(9) The project will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing, in the California Register of Historical Resources.

(b) As used in subdivision (a), "urbanized area" means an area that has a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (a), this division does apply to a development project described in subdivision (a) if there is a reasonable possibility that the development project would have a significant effect on the environment or the residents of the development project due to unusual circumstances or due to related or cumulative impacts of reasonably foreseeable projects in the vicinity of the development project.

SEC. 3. Section 21153 of the Public Resources Code is amended to read:

21153. (a) Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located unless otherwise designated annually by agreement between the local lead agency and the city or county, and may consult with any person who has special expertise with respect to any environmental impact involved. In the case of a project described in subdivision (c) of Section 21065, the local lead agency shall, upon the request of the project applicant, provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. The local lead agency may consult with persons identified by the project applicant that the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made written request to be consulted on the project. A request by the project applicant for early consultation shall be made not later than 30 days after the date that the determination required by Section 21080.1 was made with respect to the project. The local lead agency may charge and collect a fee from the project applicant in an amount that does not exceed the actual costs of the consultations.

(b) In the case of a project described in subdivision (a) of Section 21065, the lead agency may provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. At the request of the lead agency, the Office of Planning and Research shall ensure that each responsible agency, and any public agency that has jurisdiction by law with respect to the project, is notified regarding any early consultation.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project that are within an area of expertise of the agency or that are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

CHAPTER 416

An act to add Chapter 5.1 (commencing with Section 8330) to Division 1 of Title 2 of the Government Code, relating to state government.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Chapter 5.1 (commencing with Section 8330) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 5.1. CITIZEN COMPLAINT ACT OF 1997

8330. This chapter shall be known and may be cited as the Citizen Complaint Act of 1997. All state agencies that have Internet websites shall implement this act in a manner that is consistent with the statewide strategy for electronic commerce as established by the Department of Information Technology.

8331. (a) State agencies shall make available on their Internet websites, on or before July 1, 1998, or within six months of the establishment of such a site, whichever is later, a plain-language form through which individuals can register complaints or comments relating to the performance of that agency. The Internet website shall provide instructions on filing the complaint electronically, or on the manner in which to download, complete, and mail the complaint form to the state agency, or both, consistent with whichever method the agency establishes for the filing of complaints.

(b) Any printed complaint form used by a state agency as part of the process of receiving a complaint against any licensed individual or corporation subject to regulation by that agency shall make the form available on its Internet website, on or before July 1, 1998, or within six months of the establishment of such a site, whichever is later. The Internet website shall provide instructions on filing the complaint electronically, or on the manner in which to download, complete, and mail the complaint form to the state agency, or both, consistent with whichever method the agency establishes for the filing of complaints.

(c) State agencies making a complaint form available on their Internet website shall, to the extent feasible:

(1) Advise individuals calling the state agency to lodge a complaint of both of the following:

(A) The availability of the complaint form on the Internet website.

(B) That many public libraries provide Internet access.

(2) Include their Internet website address in the telephone directory in order that citizens will be aware that they may contact the state agency via the Internet or by telephone.

(d) Public libraries, to the extent permitted through donations and other means, may do each of the following:

(1) Provide Internet access to their patrons.

(2) Advertise that they provide Internet access.

(e) Notwithstanding subdivision (a) of Section 11000, state agency as used in this section includes the California State University.

8332. It is the intent of the Legislature that this chapter shall not apply to the Reporting of Improper Governmental Activities Act (Article 3 (commencing with Section 8547) of Chapter 6.5) or the procedures established to investigate citizens' complaints against peace officers as required by Section 832.5 of the Penal Code.

CHAPTER 417

An act to amend Sections 46601 and 48919 of, and to add Section 48919.5 to, the Education Code, relating to pupils.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 46601 of the Education Code is amended to read:

46601. If, within 30 calendar days after the person having legal custody of a pupil has so requested, the governing board of either school district fails to approve interdistrict attendance in the current term, or, in the absence of an agreement between the districts, fails or refuses to enter into an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

If, within 14 calendar days after the commencement of instruction in a new term in each of the school districts, respectively, when the person having legal custody of a pupil has so requested separately of each district not later than 30 calendar days prior to the commencement of instruction in that term in that district, the governing board of either district fails to approve interdistrict attendance in that term, or, in the absence of an agreement between the districts to permit that attendance, fails or refuses to enter an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

Notifying districts shall also, in all instances, advise persons making unsuccessful requests for interdistrict attendance of all of the following:

(a) The person having legal custody may appeal, within 30 calendar days of the failure or refusal to issue a permit, or to enter into an agreement allowing the attendance, to the county board of education having jurisdiction over the district of residence of the parent or legal guardian or person having legal custody. Failure to appeal within the required time is good cause for denial of an appeal.

An appeal shall be accepted only upon verification by the county board's designee that appeals within the districts have been exhausted. If new evidence or grounds for the request are introduced, the county board may remand the matter for further consideration by the district or districts. In all other cases, the appeal shall be granted or denied on its merits.

(b) (1) The county board of education shall, within 30 calendar days after the appeal is filed, determine whether the pupil should be permitted to attend in the district in which the pupil desires to attend and the applicable period of time. In the event that compliance by the county board within the time requirement for determining whether the pupil should be permitted to attend in the district in which the pupil desires to attend is impractical, the county board or the county superintendent of schools, for good cause, may extend the time period for up to an additional five school days. The county shall provide adequate notice to all parties of the date and time of any hearing scheduled and of the opportunity to submit written statements and documentation and to be heard on the matter pursuant to rules and regulations adopted by the county board of education. The county board rules may provide for the granting of continuances upon a showing of good cause. The county board of education shall render a decision within three schooldays of any hearing conducted by the board unless the person who filed the appeal requests a postponement.

(2) In a class 1 or class 2 county, the county board rules may provide for any hearing pursuant to this section to be conducted by a hearing officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Title 3 of the Government Code, or by an impartial administrative panel of three or more certificated persons appointed by the county board of education. Section 27722 is applicable to a hearing by any impartial administrative panel and, for purposes of this section, the term "hearing officer" in Section 27722 includes an impartial administrative panel. No member of the impartial administrative panel shall be a member of the county board of education, nor be employed by the school district of residence or the district of desired attendance. The definitions of "class 1 county" and "class 2 county" in subdivision (c) of Section 48919.5 apply to this section. If the hearing officer is not authorized to decide whether the pupil should be permitted to attend in the district in which the pupil desires to attend, the county board of education within 10 days of receiving the recommended decision pursuant to subdivision (b) of Section 27722 of the Government Code shall render a decision.

(c) The county supervisor of attendance, or other designee of the county superintendent of schools, shall investigate to determine whether local remedies in the matter have been exhausted and to provide any additional information deemed useful to the county board in reaching a decision.

(d) If the interdistrict attendance involves school districts located in different counties, the county board of education having jurisdiction over the district denying a permit, or refusing or failing to enter into an agreement to allow for the issuance of a permit, shall have jurisdiction for purposes of an appeal. If both districts deny a permit, or refuse or fail to enter into an agreement to allow for the issuance of a permit, the county board having jurisdiction over the district of residence shall have jurisdiction for purposes of an appeal and, upon granting a pupil's appeal, shall seek concurrence in the decision by the county board of the other county which shall provide adequate opportunity for the district under its jurisdiction to be heard on the matter before making a decision. If the two county boards do not then concur, the pupil's appeal shall be denied.

(e) Students who are under consideration for expulsion, or who have been expelled pursuant to Sections 48915 and 48918, may not appeal interdistrict attendance denials or recisions while expulsion proceedings are pending, or during the term of the expulsion.

SEC. 2. Section 48919 of the Education Code is amended to read:

48919. If a pupil is expelled from school, the pupil or the pupil's parent or guardian may, within 30 days following the decision of the governing board to expel, file an appeal to the county board of education which shall hold a hearing thereon and render its decision.

The county board of education, or in a class 1 or class 2 county a hearing officer or impartial administrative panel, shall hold the hearing within 20 schooldays following the filing of a formal request under this section. If the county board of education hears the appeal without a hearing pursuant to Section 48919.5, then the board shall render a decision within three schooldays of the hearing, unless the pupil requests a postponement.

The period within which an appeal is to be filed shall be determined from the date a governing board votes to expel even if enforcement of the expulsion action is suspended and the pupil is placed on probation pursuant to Section 48917. A pupil who fails to appeal the original action of the board within the prescribed time may not subsequently appeal a decision of the board to revoke probation and impose the original order of expulsion.

The county board of education shall adopt rules and regulations establishing procedures for expulsion appeals conducted under this section. If the county board of education in a class 1 or class 2 county elects to use the procedures in Section 48919.5, then the board shall adopt rules and regulations establishing procedures for expulsion appeals under Section 48919.5. The adopted rules and regulations shall include, but need not be limited to, the requirements for filing a notice of appeal, the setting of a hearing date, the furnishing of notice to the pupil and the governing board regarding the appeal, the furnishing of a copy of the expulsion hearing record to the county board of education, procedures for the conduct of the hearing, and the preservation of the record of the appeal.

The pupil shall submit a request for a copy of the written transcripts and supporting documents from the district simultaneously with the filing of the notice of appeal with the county board of education. The school district shall provide the pupil with the transcriptions, supporting documents, and records within five schooldays following the pupil's request. The pupil shall immediately file suitable copies of these records with the county board of education.

SEC. 3. Section 48919.5 is added to the Education Code, to read:

48919.5. (a) A county board of education in a class 1 or class 2 county may have a hearing officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Title 3 of the Government Code, or an impartial administrative panel of three or more certificated persons appointed by the county board of education, hear appeals filed pursuant to Section 48919. The members of the impartial administrative panel shall not be members of the governing board of the school district nor employees of the school district, from which the pupil filing the appeal was expelled. Neither the hearing officer, nor any member of the administrative panel, hearing a pupil's appeal shall have been the hearing officer or a member of the administrative panel that conducted the pupil's expulsion hearing.

(b) A hearing conducted pursuant to this section shall not issue a final order of the county board. The hearing officer or impartial administrative panel shall prepare a recommended decision, including any findings or conclusions required for that decision, and shall submit that recommendation and the record to the county board of education within three schooldays of hearing the appeal.

(c) Sections 48919, 48920, 48921, 48922, 48923, and 48925 are applicable to a hearing conducted pursuant to this section.

(d) Within 10 schooldays of receiving the recommended decision and record from the hearing officer or the impartial administrative panel, the county board of education shall review the recommended decision and record and render a final order of the board.

(e) For purposes of this article, the following definitions shall apply:

(1) "Countywide ADA" means the aggregate number of annual units of regular average daily attendance for the fiscal year in all school districts within the county.

(2) "Class 1 county" means a county with 1994/95 countywide ADA of more than 500,000.

(3) "Class 2 county" means a county with 1994/95 countywide ADA of at least 180,000 but less than 500,000.

CHAPTER 418

An act to add Section 39618 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 39618 is added to the Health and Safety Code, to read:

39618. Refrigerated trailers shall be classified as mobile sources and shall be regulated by the state board on a statewide basis to prevent confusion concerning whether the trailers are stationary sources when not being driven and to prevent inconsistent regulation by districts of vehicles that are operated in more than one district. The state board shall develop regulations, on or before January 1, 2000, to achieve reductions in emissions attributable to the refrigerated trailers.

CHAPTER 419

An act to amend Section 149.1 of the Streets and Highways Code, relating to highways.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 149.1 of the Streets and Highways Code is amended to read:

149.1. (a) Notwithstanding Sections 149 and 30800 of this code, and Section 21655.5 of the Vehicle Code, the San Diego Association of Governments (SANDAG) may conduct, administer, and operate a congestion pricing and transit development demonstration program on the Interstate Highway Route 15 (I-15) high-occupancy vehicle expressway. The program may, under the circumstances described in subdivision (b), direct and authorize the entry and use of the I-15 high-occupancy vehicle lanes by single-occupant vehicles during peak periods, as defined by SANDAG, for a fee. The amount of the fee shall be established from time to time by SANDAG, and collected in a manner determined by SANDAG.

(b) Implementation of the demonstration program is subject to each of the following mandatory conditions:

(1) Approval of the program by the United States Department of Transportation shall be obtained before the project is implemented.

(2) Level of Service B, as measured by the most recent issue of the Highway Capacity Manual, as adopted by the Transportation Research Board, or the level of service of a high-occupancy vehicle lane without single-occupant vehicles, shall be maintained at all times in the high-occupancy vehicle lanes. Unrestricted access to the lanes by high-occupancy vehicles shall be available at all times. At least annually, the department shall audit the level of service during peak traffic hours.

(c) Single-occupant vehicles that are certified or authorized by SANDAG for entry into and use of the I-15 high-occupancy vehicle lanes are exempt from Section 21655.5 of the Vehicle Code, and the driver shall not be in violation of the Vehicle Code because of that entry and use.

(d) SANDAG shall carry out the program in cooperation with the department, and shall consult the department in the operation of the project and on matters related to highway design and construction. With the assistance of the department, SANDAG shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles.

(e) (1) Agreements between SANDAG, the department, and the Department of the California Highway Patrol shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the demonstration program, including clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes. The agreements shall provide for reimbursement of state agencies, from revenues generated by the program, federal funds specifically allocated to SANDAG for the program by the federal government, or other funding sources that are not otherwise available to state agencies for transportation related projects, for costs incurred in connection with the implementation or operation of the demonstration program. Reimbursement for SANDAG's program-related planning and administrative costs in the first year of operation of the program shall not exceed 5 percent of the revenues generated, and shall not exceed 3 percent of revenues for any year thereafter.

(2) All remaining revenue shall be used in the I-15 corridor exclusively for (A) the improvement of transit service, including, but not limited to, support for transit operations, and (B) high-occupancy vehicle facilities and shall not be used for any other purpose.

(f) SANDAG, the San Diego Metropolitan Transit Development Board, and the department shall cooperatively develop a single transit capital improvement plan for the I-15 corridor.

(g) Upon completion of the demonstration program, SANDAG shall submit a report to the Legislature on its findings, conclusions, and recommendations concerning the demonstration program.

(h) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date .

CHAPTER 420

An act to amend Section 95.31 of the Revenue and Taxation Code, relating to local government finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 95.31 of the Revenue and Taxation Code 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 fiscal year from the 1995–96 fiscal year to the 2000–01 fiscal year, inclusive, 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) (1) 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. Commencing with the 1996–97 fiscal year, if a county was otherwise eligible but was unable to participate in this program in the 1995–96 fiscal year because it did not meet the funding level and staffing requirements of this paragraph, that county shall maintain a base staffing, including contract staff, and total funding level in the county assessor's office equal to the levels in the 1995–96 fiscal year.

(2) Prior to the assessor's recommendation for participation in the State-County Property Tax Administration Program, the assessor shall consult with the county tax collector, and any other county agency directly involved in property tax administration, to discuss the needs of the program for the duration of the contractual agreement.

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

In order to provide, in a timely manner, that ongoing level of support that is essential to preserve the system of property tax administration in this state, it is necessary that this act take effect immediately.

CHAPTER 421

An act to amend, repeal, and add Section 22352 of, and to add and repeal Section 22352.1 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 22352 of the Vehicle Code is amended to read:

22352. (a) The prima facie limits are as follows and shall be applicable unless changed as authorized in this code and, if so changed, only when signs have been erected giving notice thereof:

(1) Fifteen miles per hour:

(A) When traversing a railway grade crossing, if during the last 100 feet of the approach to the crossing the driver does not have a clear and unobstructed view of the crossing and of any traffic on the

railway for a distance of 400 feet in both directions along the railway. This subdivision does not apply in the case of any railway grade crossing where a human flagman is on duty or a clearly visible electrical or mechanical railway crossing signal device is installed but does not then indicate the immediate approach of a railway train or car.

(B) When traversing any intersection of highways if during the last 100 feet of the driver's approach to the intersection the driver does not have a clear and unobstructed view of the intersection and of any traffic upon all of the highways entering the intersection for a distance of 100 feet along all those highways, except at an intersection protected by stop signs or yield right-of-way signs or controlled by official traffic control signals.

(C) On any alley.

(2) Twenty-five miles per hour:

(A) On any highway other than a state highway, in any business or residence district unless a different speed is determined by local authority under procedures set forth in this code.

(B) When passing a school building or the grounds thereof, contiguous to a highway and posted with a standard "SCHOOL" warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. The prima facie limit shall also apply when passing any school grounds which are not separated from the highway by a fence, gate or other physical barrier while the grounds are in use by children and the highway is posted with a standard "SCHOOL" warning sign.

(C) When passing a senior center or other facility primarily used by senior citizens, contiguous to a street other than a state highway and posted with a standard "SENIOR" warning sign. A local authority is not required to erect any sign pursuant to this paragraph until donations from private sources covering those costs are received and the local agency makes a determination that the proposed signing should be implemented. A local authority may, however, utilize any other funds available to it to pay for the erection of those signs.

(3) Thirty-five miles per hour on any highway, other than a state highway, in any moderate density residential district, as defined in subdivision (b) of Section 22352.1, when posted with a sign giving notice of that speed limit, unless a different speed is determined by local authority under procedures set forth in this code.

(b) This section shall remain in effect only until March 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted on or before March 1, 2001, deletes or extends that date.

SEC. 2. Section 22352 is added to the Vehicle Code, to read:

22352. (a) The prima facie limits are as follows and shall be applicable unless changed as authorized in this code and, if so changed, only when signs have been erected giving notice thereof:

(1) Fifteen miles per hour:

(A) When traversing a railway grade crossing, if during the last 100 feet of the approach to the crossing the driver does not have a clear and unobstructed view of the crossing and of any traffic on the railway for a distance of 400 feet in both directions along the railway. This subdivision does not apply in the case of any railway grade crossing where a human flagman is on duty or a clearly visible electrical or mechanical railway crossing signal device is installed but does not then indicate the immediate approach of a railway train or car.

(B) When traversing any intersection of highways if during the last 100 feet of the driver's approach to the intersection the driver does not have a clear and unobstructed view of the intersection and of any traffic upon all of the highways entering the intersection for a distance of 100 feet along all those highways, except at an intersection protected by stop signs or yield right-of-way signs or controlled by official traffic control signals.

(C) On any alley.

(2) Twenty-five miles per hour:

(A) On any highway other than a state highway, in any business or residence district unless a different speed is determined by local authority under procedures set forth in this code.

(B) When passing a school building or the grounds thereof, contiguous to a highway and posted with a standard "SCHOOL" warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. The prima facie limit shall also apply when passing any school grounds which are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children and the highway is posted with a standard "SCHOOL" warning sign.

(C) When passing a senior center or other facility primarily used by senior citizens, contiguous to a street other than a state highway and posted with a standard "SENIOR" warning sign. A local authority is not required to erect any sign pursuant to this paragraph until donations from private sources covering those costs are received and the local agency makes a determination that the proposed signing should be implemented. A local authority may, however, utilize any other funds available to it to pay for the erection of those signs.

(b) This section shall become operative on March 1, 2001.

SEC. 3. Section 22352.1 is added to the Vehicle Code, to read:

22352.1. (a) Notwithstanding any other provision of law, the Town of Apple Valley, in conjunction with the Department of Transportation and the Department of the California Highway Patrol, may conduct a demonstration program that establishes a prima facie speed limit of 35 miles per hour on any highway, other than a state highway, in a moderate density residence district.

(b) For the purposes of this section, a "moderate density residence district" is that portion within the boundaries of the Town of Apple Valley of a highway and the property contiguous thereto,

other than a business district, (1) upon one side of which highway, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by six, but not more than 12, separate dwelling houses or business structures, or (2) upon both sides of which highway, collectively, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 10, but not more than 15, separate dwelling houses or business structures. A moderate density residence district may be longer than a quarter of a mile if the above ratio of separate dwelling houses or business structures to the length of the highway exists.

(c) Section 240 shall apply to the demonstration program established pursuant to subdivision (a).

(d) The Town of Apple Valley shall select at least four representative streets within a moderate density residence district for purposes of the demonstration program. The demonstration program shall be conducted for at least one year but not longer than three years. Selected streets shall have at least one quarter mile of straight roadway without interruption and at least one of the streets shall have a curb and gutter.

(e) Drivers of vehicles operating on selected streets shall comply with this code for the purpose of all traffic laws. Traffic laws shall be enforced by law enforcement agencies in accordance with law.

(f) The Town of Apple Valley shall prepare a written report at the end of the demonstration program. The report shall include data identifying street volume, street classification, street width, accident history for three years prior to the demonstration program, incidences of accidents occurring during the program, and the number of violations, identified by violation, time of day, speed, and residency of the violation. The report shall be submitted to the Legislature within 90 days of the conclusion of the program and shall be made available to the public.

(g) In addition, the Town of Apple Valley shall have a study conducted by a public or private entity employing traffic and engineering consultants or by any organization with traffic engineering expertise. The entity or organization undertaking the study shall conduct a study of speeds on the selected residential streets before posting signs. Surveys shall include morning and evening commute times. This study shall be presented with the report described in subdivision (f).

(h) This section shall remain in effect only until March 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted on or before March 1, 2001, deletes or extends that date.

CHAPTER 422

An act to amend Section 599aa of the Penal Code, relating to animal abuse.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 599aa of the Penal Code is amended to read:

599aa. (a) Any authorized officer making an arrest under Section 597.5 shall, and any authorized officer making an arrest under Section 597b, 597c, 597j, or 599a may, lawfully take possession of all birds or animals and all paraphernalia, implements or other property or things used or employed, or about to be employed, in the violation of any of the provisions of this code relating to the fighting of birds or animals that can be used in animal or bird fighting, in training animals or birds to fight, or to inflict pain or cruelty upon animals or birds in respect to animal or bird fighting.

(b) Upon taking possession, the officer shall inventory the items seized and question the persons present as to the identity of the owner or owners of the items. The inventory list shall identify the location where the items were seized, the names of the persons from whom the property was seized, and the names of any known owners of the property.

Any person claiming ownership or possession of any item shall be provided with a signed copy of the inventory list which shall identify the seizing officer and his or her employing agency. If no person claims ownership or possession of the items, a copy of the inventory list shall be left at the location from which the items were seized.

(c) The officer shall file with the magistrate before whom the complaint against the arrested person is made, a copy of the inventory list and an affidavit stating the affiant's basis for his or her belief that the property and items taken were in violation of this code. On receipt of the affidavit, the magistrate shall order the items seized to be held until the final disposition of any charges filed in the case subject to subdivision (e).

(d) All animals and birds seized shall, at the discretion of the seizing officer, be taken promptly to an appropriate animal storage facility. For purposes of this subdivision, an appropriate animal storage facility is one in which the animals or birds may be stored humanely. However, if an appropriate animal storage facility is not available, the officer may cause the animals or birds used in committing or possessed for the purpose of the alleged offenses to remain at the location at which they were found. In determining whether it is more humane to leave the animals or birds at the location at which they were found than to take the animals or birds

to an animal storage facility, the officer shall, at a minimum, consider the difficulty of transporting the animals or birds and the adequacy of the available animal storage facility. When the officer does not seize and transport all animals or birds to a storage facility, he or she shall do both of the following:

(1) Seize a representative sample of animals or birds for evidentiary purposes from the animals or birds found at the site of the alleged offenses. The animals or birds seized as a representative sample shall be transported to an appropriate animal storage facility.

(2) Cause all animals or birds used in committing or possessed for the purpose of the alleged offenses to be banded, tagged, or marked by microchip, and photographed or videotaped for evidentiary purposes.

(e) (1) If ownership of the seized animals or birds cannot be determined after reasonable efforts, the officer or other person named and designated in the order as custodian of the animals or birds may, after holding the animals and birds for a period of not less than 10 days, petition the magistrate for permission to humanely destroy or otherwise dispose of the animals or birds. The petition shall be published for three successive days in a newspaper of general circulation. The magistrate shall hold a hearing on the petition not less than 10 days after seizure of the animals or birds, after which he or she may order the animals or birds to be humanely destroyed or otherwise disposed of, or to be retained by the officer or person with custody until the conviction or final discharge of the arrested person. No animal or bird may be destroyed or otherwise disposed of until 4 days after the order.

(2) Paragraph (1) shall apply only to those animals and birds seized under any of the following circumstances:

(A) After having been used in violation of any of the provisions of this code relating to the fighting of birds or animals.

(B) At the scene or site of a violation of any of the provisions of this code relating to the fighting of birds or animals.

(f) Upon the conviction of the arrested person, all property seized shall be adjudged by the court to be forfeited and shall then be destroyed or otherwise disposed of as the court may order. Upon the conviction of the arrested person, the court may order the person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the animals or birds. Each person convicted in connection with a particular animal or bird, excluding any person convicted as a spectator pursuant to Section 597b or 597c, or subdivision (b) of Section 597.5, may be held jointly and severally liable for restitution pursuant to this subdivision. This payment shall be in addition to any other fine or other sentence ordered by the court. The court shall specify in the order that the public entity shall not enforce the order until the defendant satisfies all other outstanding fines, penalties, assessments, restitution fines, and restitution orders. The court may relieve any convicted person

of the obligation to make payment pursuant to this subdivision for good cause but shall state the reasons for that decision in the record. In the event of the acquittal or final discharge without conviction of the arrested person, the court shall, on demand, direct the delivery of the property held in custody to the owner. If the owner is unknown, the court shall order the animals or birds to be humanely destroyed or otherwise disposed of.

CHAPTER 423

An act to amend Sections 18040, 18550, 18551, 18551.1, 18555, and 18611 of the Health and Safety Code, relating to mobilehome parks.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 18040 of the Health and Safety Code is amended to read:

18040. (a) With respect to the sale of any manufactured home, mobilehome, or commercial coach that has not been previously installed on a foundation system pursuant to Section 18551, a dealer may solicit or obtain listings, engage in the multiple listing only with other dealers, or engage in payments only to other dealers or groups of dealers, pursuant to cooperative brokering and referral arrangements or agreements on the sale of only a manufactured home, mobilehome, or commercial coach which has been titled by the department.

(b) With respect to the resale of any manufactured home or mobilehome that has not been previously installed on a foundation system pursuant to subdivision (a) of Section 18551, a dealer may solicit or obtain listings, engage in multiple listing, or engage in payments with other dealers, groups of dealers, or with real estate licensees licensed pursuant to Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code.

SEC. 2. Section 18550 of the Health and Safety Code is amended to read:

18550. It is unlawful for any person to use or cause, or permit to be used for occupancy, any of the following manufactured homes, mobilehomes, or recreational vehicles, wherever the manufactured homes, mobilehomes, or recreational vehicles are located:

(a) Any manufactured home, mobilehome, or recreational vehicle supplied with fuel, gas, water, electricity, or sewage connections, unless the connections and installations conform to regulations of the department.

(b) Any manufactured home, mobilehome, or recreational vehicle that is permanently attached with underpinning or foundation to the ground, except for a manufactured home or mobilehome bearing a department insignia or federal label, that is installed in accordance with this part.

(c) Any manufactured home or mobilehome that does not conform to the registration requirements of the department.

(d) Any manufactured home or mobilehome in an unsafe or unsanitary condition.

(e) Any manufactured home, mobilehome, or recreational vehicle that is structurally unsound and does not protect its occupants against the elements.

SEC. 3. Section 18551 of the Health and Safety Code is amended to read:

18551. The department shall establish regulations for manufactured home, mobilehome, and commercial coach foundation systems that shall be applicable throughout the state. When established, these regulations supersede any ordinance enacted by any city, county, or city and county applicable to manufactured home, mobilehome, and commercial coach foundation systems. The department may approve alternate foundation systems to those provided by regulation where the department is satisfied of equivalent performance. The department shall document approval of alternate systems by its stamp of approval on the plans and specifications for the alternate foundation system. A manufactured home, mobilehome, or commercial coach may be installed on a foundation system as either a fixture or improvement to the real property, in accordance with subdivision (a), or a manufactured home or mobilehome may be installed on a foundation system as a chattel, in accordance with subdivision (b).

(a) Installation of a manufactured home, mobile home, or commercial coach as a fixture or improvement to the real property shall comply with all of the following:

(1) Prior to installation of a manufactured home, mobilehome, or commercial coach on a foundation system, the manufactured home, mobilehome, or commercial coach owner or a licensed contractor shall obtain a building permit from the appropriate enforcement agency. To obtain a permit, the owner or contractor shall provide the following:

(A) Written evidence acceptable to the enforcement agency that the manufactured home, mobilehome, or commercial coach owner owns, holds title to, or is purchasing the real property where the mobilehome is to be installed on a foundation system. A lease held by the manufactured home, mobilehome, or commercial coach owner, that is transferable, for the exclusive use of the real property where the manufactured home, mobilehome, or commercial coach is to be installed, shall be deemed to comply with this paragraph if the lease is for a term of 35 years or more, or if less than 35 years, for a term

mutually agreed upon by the lessor and lessee, and the term of the lease is not revocable at the discretion of the lessor except for cause, as described in subdivisions 2 to 5, inclusive, of Section 1161 of the Code of Civil Procedure.

(B) Written evidence acceptable to the enforcement agency that the registered owner owns the manufactured home, mobilehome, or commercial coach free of any liens or encumbrances or, in the event that the legal owner is not the registered owner, or liens and encumbrances exist on the manufactured home, mobilehome, or commercial coach, written evidence provided by the legal owner and any lienors or encumbrancers that the legal owner, lienor, or encumbrancer consents to the attachment of the manufactured home, mobilehome, or commercial coach upon the discharge of any personal lien, that may be conditioned upon the satisfaction by the registered owner of the obligation secured by the lien.

(C) Plans and specifications required by department regulations or a department-approved alternate for the manufactured home, mobilehome, or commercial coach foundation system.

(D) The manufactured home, mobilehome, or commercial coach manufacturer's installation instructions, or plans and specifications signed by a California licensed architect or engineer covering the installation of an individual manufactured home, mobilehome, or commercial coach in the absence of the manufactured home, mobilehome, or commercial coach manufacturer's instructions.

(E) Building permit fees established by ordinance or regulation of the appropriate enforcement agency.

(F) A fee payable to the department in the amount of eleven dollars ($11) for each transportable section of the manufactured home, mobilehome, or commercial coach, that shall be transmitted to the department at the time the certificate of occupancy is issued with a copy of the building permit and any other information concerning the manufactured home, mobilehome, or commercial coach which the department may prescribe on forms provided by the department.

(2) (A) On the same day that the certificate of occupancy for the manufactured home, mobilehome, or commercial coach is issued by the appropriate enforcement agency, the enforcement agency shall record with the county recorder of the county where the real property is situated, that the manufactured home, mobilehome, or commercial coach has been installed upon, a document naming the owner of the real property, describing the real property with certainty, and stating that a manufactured home, mobilehome, or commercial coach has been affixed to that real property by installation on a foundation system pursuant to this subdivision.

(B) When recorded, the document referred to in subparagraph (A) shall be indexed by the county recorder to the named owner and shall be deemed to give constructive notice as to its contents to all persons thereafter dealing with the real property.

(C) Fees received by the department pursuant to subparagraph (F) of paragraph (1) shall be deposited in the Mobilehome-Manufactured Home Revolving Fund established under subdivision (a) of Section 18016.5.

(3) The department shall adopt regulations providing for the cancellation of registration of a manufactured home, mobilehome, or commercial coach that is permanently attached to the ground on a foundation system pursuant to subdivision (a). The regulations shall provide for the surrender to the department of the certificate of title and other indicia of registration. For the purposes of this subdivision, permanent affixation to a foundation system shall be deemed to have occurred on the day a certificate of occupancy is issued to the manufactured home, mobilehome, or commercial coach owner and the document referred to in subparagraph (A) of paragraph (2) is recorded. Cancellation shall be effective as of that date and the department shall enter the cancellation on its records upon receipt of a copy of the certificate of occupancy. This subdivision shall not be construed to affect the application of existing laws, or the department's regulations or procedures with regard to the cancellation of registration, except as to the requirement therefor and the effective date thereof.

(4) Once installed on a foundation system in compliance with this subdivision, a manufactured home, mobilehome, or commercial coach shall be deemed a fixture and a real property improvement to the real property to which it is affixed. Physical removal of the manufactured home, mobilehome, or commercial coach shall thereafter be prohibited without the consent of all persons or entities who, at the time of removal, have title to any estate or interest in the real property to which the manufactured home, mobilehome, or commercial coach is affixed.

(5) For the purposes of this subdivision:

(A) "Physical removal" shall include, without limitation, the unattaching of the manufactured home, mobilehome, or commercial coach from the foundation system, except for temporary purposes of repair or improvement thereto.

(B) Consent to removal shall not be required from the owners of rights-of-way or easements or the owners of subsurface rights or interests in or to minerals, including, but not limited to, oil, gas, or other hydrocarbon substances.

(6) At least 30 days prior to a legal removal of the manufactured home, mobilehome, or commercial coach from the foundation system and transportation away from the real property to which it was formerly affixed, the manufactured home, mobilehome, or commercial coach owner shall notify the department and the county assessor of the intended removal of the manufactured home, mobilehome, or commercial coach. The department shall require written evidence that the necessary consents have been obtained pursuant to this section and shall require application for either a

transportation permit or manufactured home, mobilehome, or commercial coach registration, as the department may decide is appropriate to the circumstances. Immediately upon removal, as defined in this section, the manufactured home, mobilehome, or commercial coach shall be deemed to have become personal property and subject to all laws governing the same as applicable to a manufactured home, mobilehome, or commercial coach.

(b) The installation of a manufactured home or a mobilehome on a foundation system as chattel shall be in accordance with Section 18613 and shall be deemed to meet or exceed the requirements of Section 18613.4. This subdivision shall not be construed to affect the application of sales and use or property taxes. No provisions of this subdivision are intended, nor shall they be construed, to affect the ownership interest of any owner of a manufactured home or mobilehome.

(c) Once installed on a foundation system, a manufactured home, mobilehome, or commercial coach shall be subject to state enforced health and safety standards for manufactured homes, mobilehomes, or commercial coaches enforced pursuant to Section 18020.

(d) No local agency shall require that any manufactured home, mobilehome, or commercial coach currently on private property be placed on a foundation system.

(e) No local agency shall require that any manufactured home or mobilehome located in a mobilehome park be placed on a foundation system.

(f) No local agency shall require, as a condition for the approval of the conversion of a rental mobilehome park to a resident-owned park, including, but not limited to, a subdivision, cooperative, or condominium for mobilehomes, that any manufactured home or mobilehome located there be placed on a foundation system. This subdivision shall only apply to the conversion of a rental mobilehome park that has been operated as a rental mobilehome park for a minimum period of five years.

SEC. 4. Section 18551.1 of the Health and Safety Code is amended to read:

18551.1. (a) Any mobilehome park, constructed on or after January 1, 1982, may be constructed in a manner that will enable manufactured homes and mobilehomes sited in the park to be placed upon a foundation system, and manufactured homes and mobilehomes sited in the park may be placed upon foundation systems, subject to the requirements of subdivision (b) of Section 18551.

(b) Notwithstanding subdivision (a), any manufactured home or mobilehome originally sited on or after January 1, 1985, in a mobilehome park constructed prior to January 1, 1982, may be placed upon a foundation system, subject to the requirements of subdivision (b) of Section 18551.

(c) Notwithstanding subdivisions (a) and (b), any manufactured home or mobilehome sited in a mobilehome park which is converted, or in the process of being converted, to resident ownership on or after January 1, 1992, may be placed on a foundation system, subject to the requirements of subdivision (b) of Section 18551, and with the approval of the ownership of the park.

(d) Notwithstanding subdivisions (a) and (b), the installation of a manufactured home or mobilehome within a mobilehome park pursuant to subdivision (b) of Section 18551 shall be subject to prior written approval by the ownership of the mobilehome park.

SEC. 5. Section 18555 of the Health and Safety Code is amended to read:

18555. (a) Notwithstanding any other provision of law, the registered owner of a manufactured home or mobilehome in a mobilehome park, converted or proposed to be converted to a resident-owned subdivision, cooperative, condominium, or nonprofit corporation formed pursuant to Section 11010.8 of the Business and Professions Code, may, if the registered owner is also a participant in the resident ownership, apply for voluntary conversion of the manufactured home or mobilehome to a fixture and improvement to the underlying real property without compliance with subdivision (a) of Section 18551.

(b) The resident ownership or proposed resident ownership of a mobilehome park converted or proposed to be converted to a resident-owned subdivision, cooperative, condominium, or nonprofit corporation formed pursuant to Section 11010.8 of the Business and Professions Code, shall, on behalf of registered owners of manufactured homes and mobilehomes making application pursuant to subdivision (a), establish with an escrow agent an escrow account. All of the following shall be deposited into the escrow account:

(1) A copy of the registered owner's application, on a form, provided by the department, that shall be substantially similar to forms presently used to record the installation of manufactured homes and mobilehomes on foundation systems pursuant to subdivision (a) of Section 18551. In addition, by signature of an authorized representative, the form shall contain provisions for certification by the resident ownership of the mobilehome park converted or proposed to be converted to a subdivision, cooperative, or condominium that the applicant is a participant in the resident-ownership.

(2) The certificate of title, the current registration card, decals, and other indicia of registration of the manufactured home or mobilehome.

(3) In the absence of a certificate of title for the manufactured home or mobilehome, written evidence from lienholders on record with the department that the lienholders consent to conversion of the manufactured home or mobilehome to a fixture and improvement to the underlying real property upon the discharge of any personal lien,

that may be conditioned upon the satisfaction by the registered owner of the obligation secured by the lien.

(4) A fee payable to the department in the amount of twenty-two dollars ($22), for each transportable section of the manufactured home or mobilehome, that shall be transmitted to the department upon close of escrow with a copy of the form recorded with the county recorder's office pursuant to paragraph (2) of subdivision (c). Fees received by the department pursuant to this section shall be deposited in the Mobilehome-Manufactured Home Revolving Fund established under subdivision (a) of Section 18016.5 for administration of Part 2 (commencing with Section 18000).

(5) Escrow instructions describing the terms and conditions of compliance with this section, the requirements of the department, and other applicable terms and conditions.

(c) If the manufactured home or mobilehome is subject to local property taxation, and subject to registration under Part 2 (commencing with Section 18000), the escrow officer shall forward to the tax collector of the county where the used manufactured home or mobilehome is located, a written demand for a tax clearance certificate if no liability exists, or a conditional tax clearance certificate if a tax liability exists, to be provided on a form prescribed by the Controller. The conditional tax clearance certificate shall state the amount of the tax liability due, if any, and the final date that amount may be paid out of the proceeds of escrow before a further tax liability may be incurred.

(1) Within five working days of receipt of the written demand for a conditional tax clearance certificate or a tax clearance certificate, the county tax collector shall forward the conditional tax clearance certificate or a tax clearance certificate showing that no tax liability exists to the requesting escrow officer. In the event the tax clearance certificate's or conditional tax clearance certificate's final due date expires within 30 days of the date of issuance, an additional conditional tax clearance certificate or a tax clearance certificate shall be completed that has a final due date of at least 30 days beyond the date of issuance.

(2) If the tax collector to whom the written demand for a tax clearance certificate or a conditional tax clearance certificate was made fails to comply with that demand within 30 days from the date the demand was mailed, the escrow officer may close the escrow and submit a statement of facts certifying that the written demand was made on the tax collector and the tax collector failed to comply with that written demand within 30 days. This statement of facts shall be accepted by the department and all other parties to the conversion in lieu of a conditional tax clearance certificate or a tax clearance certificate, as prescribed by subdivision (a) of Section 18092.7, and the conversion of the manufactured home or mobilehome to a fixture and improvement to the underlying real property may be completed.

(3) The escrow officer may satisfy the terms of the conditional tax clearance certificate by paying the amount of tax liability shown on the form by the tax collector out of the proceeds of escrow on or before the date indicated on the form and by certifying in the space provided on the form that all terms and conditions of the conditional tax clearance certificate have been complied with.

(d) (1) On the same or following day that the escrow required by subdivision (b) is closed, the escrow agent shall record, or cause to be recorded, with the county recorder of the county where the converted manufactured home or mobilehome is situated, the form prescribed by paragraph (1) of subdivision (b) stating that the manufactured home or mobilehome has been converted to a fixture and improvement to the underlying real property pursuant to this section.

(2) When recorded, the form referred to in paragraph (1) of subdivision (b) shall be indexed by the county recorder to the named owner of the converted manufactured home or mobilehome, and shall be deemed to give constructive notice as to its contents to all persons thereafter dealing with the real property.

(e) The department shall cancel the registration of a manufactured home or mobilehome converted to a fixture and improvement to the underlying real property pursuant to this section. For the purposes of this subdivision, conversion of the manufactured home to a fixture and improvement to the underlying real property shall be deemed to have occurred on the day a form referred to in paragraph (1) of subdivision (b) is recorded. Cancellation shall be effective as of that date, and the department shall enter the cancellation on its records upon receipt of a copy of the form recorded pursuant to paragraph (1) of subdivision (c), the certificate of title, the current registration card, other indicia of registration, and fees prescribed by this section. This subdivision shall not be construed to affect the application of existing laws, or the department's regulations or procedures with regard to the cancellation of registration, except as to the requirement therefor and the effective date thereof.

(f) Once the form referred to in paragraph (1) of subdivision (b) has been recorded, a manufactured home or mobilehome shall be deemed a fixture and improvement to the underlying real property described with certainty on the form. Physical removal of the manufactured home or mobilehome from the real property where it has become a fixture and improvement pursuant to this section shall thereafter be prohibited without the consent of all persons or entities who, at the time of removal, have title to any estate or interest in the real property where the manufactured home or mobilehome has become a fixture and improvement.

(g) For the purposes of this section:

(1) "Physical removal" shall include, without limitation, the manufactured home, mobilehome, or any transportable section

thereof, from the real property where it has become a fixture and improvement.

(2) Consent to removal shall not be required from the owners of rights-of-way or easements or the owners of subsurface rights or interests in or to minerals, including, but not limited to, oil, gas, or other hydrocarbon substances.

(h) At least 30 days prior to a legal removal of the manufactured home or mobilehome from the real property where it has become a fixture and improvement and transportation away from the real property, the manufactured home or mobilehome owner shall notify the department and the county assessor of the intended removal of the manufactured home or mobilehome. The department shall require written evidence that the necessary consents have been obtained pursuant to this section, and shall require application for either a transportation permit or manufactured home or mobilehome registration, as the department may decide is appropriate to the circumstances. Immediately upon removal, as defined in this section, the manufactured home or mobilehome shall be deemed to have become personal property and subject to all laws governing the same as applicable to a manufactured home or mobilehome.

(i) Notwithstanding any other provision of law, any manufactured home or mobilehome not installed on a foundation system pursuant to subdivision (a) of Section 18551 or converted to a fixture and improvement to real property as prescribed by this section shall not be deemed a fixture or improvement to the real property. This subdivision shall not be construed to affect the application of sales and use or property taxes.

(j) Once converted to a fixture and improvement to real property, a manufactured home or mobilehome shall be subject to state-enforced health and safety standards for manufactured homes or mobilehomes enforced pursuant to Section 18020.

(k) No local agency shall require, as a condition for the approval of the conversion of a rental mobilehome park to a resident-owned park, including, but not limited to, a subdivision, cooperative, condominium, or nonprofit corporation formed pursuant to Section 11010.8 of the Business and Professions Code for manufactured homes or mobilehomes, that any manufactured home or mobilehome located there be converted to a fixture and improvement to the underlying real property.

(*l*) The department is authorized to adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code in order to implement the purposes of this section.

SEC. 6. Section 18611 of the Health and Safety Code is amended to read:

18611. Factory-built housing bearing an insignia of approval pursuant to Section 19980, mobilehomes as defined in Section 18008,

or manufactured homes as defined in Section 18007.5 may be affixed to a foundation system within a mobilehome park, provided the installation conforms to the rules of the mobilehome park, the installation is approved pursuant to Section 19992, or in the case of mobilehomes or manufactured homes the installation is in accordance with subdivision (b) of Section 18551, and no single structure exceeds two stories in height or contains more than four dwelling units. Any factory-built housing, mobilehomes, or manufactured homes included in a mobilehome park pursuant to this section shall be located on lots especially designated for that purpose in accordance with the rules of the mobilehome park.

This section shall be applicable only to mobilehome parks (1) where the permit to construct the park is issued on or after January 1, 1982, and (2) that are additionally granted a zone designation or conditional use permit that authorizes permanent occupancies of the type and to the extent established pursuant to this section. Nothing in this section shall be construed to create an exemption from the requirements of Division 2 (commencing with Section 66410) of Title 7 of the Government Code.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 424

An act to amend Sections 714, 1055, 7149.2, and 13005 of, and to add Section 3031.2 to, the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 714 of the Fish and Game Code is amended to read:

714. (a) In addition to Section 3031, 3031.2, 7149, or 7149.2 and notwithstanding Section 3037, the department shall issue lifetime

sportsman's licenses under this section. A lifetime sportsman's license authorizes the taking of birds, mammals, fish, reptiles, or amphibia anywhere in this state in accordance with law for purposes other than profit for the life of the person to whom issued unless revoked for a violation of this code or regulations adopted under this code. A lifetime sportsman's license is not transferable. A lifetime sportsman's license does not include any special license tags, license stamps, or fees.

(b) A lifetime sportsman's license may be issued to residents of this state, as follows:

(1) To a person 62 years of age or over upon payment of a fee of six hundred dollars ($600) in 1998.

(2) To a person 40 years of age or over and less than 62 years of age upon payment of a fee of eight hundred ninety dollars ($890) in 1998.

(3) To a person 10 years of age or over and less than 40 years of age upon payment of a fee of nine hundred ninety dollars ($990) in 1998.

(4) To a person less than 10 years of age upon payment of a fee of six hundred dollars ($600) in 1998.

(5) The department shall establish the fee for each license authorized under this section in 1999 and subsequent years. The license fee shall not be less than the fee authorized in 1998, and the fee shall not exceed the cost of a license if the license fee was adjusted pursuant to Section 713 with the base year of 1998.

(c) Nothing in this section requires a person under the age of 16 to obtain a license to take fish, reptiles, or amphibia for purposes other than profit or to obtain a license to take birds or mammals except as required by law.

(d) Nothing in this section exempts an applicant for a license from meeting other qualifications or requirements otherwise established by law for the privilege of sporthunting or sport fishing.

(e) Upon payment of a fee of three hundred ten dollars ($310), a person holding a lifetime hunting license or lifetime sportsman's license shall be issued annually one deer tag application pursuant to subdivision (a) of Section 4332 and one book of five wild pig tags issued pursuant to Section 4654.

(f) Upon payment of a fee of two hundred dollars ($200), a person holding a lifetime hunting license or lifetime sportsman's license shall be entitled annually to the privileges afforded to a person holding a state duck stamp issued pursuant to subdivision (a) of Section 3700 and an upland game bird stamp issued pursuant to Section 3682.

SEC. 2. Section 1055 of the Fish and Game Code is amended to read:

1055. (a) The department may authorize any person, except a commissioner or an officer or employee of the department, to be a license agent to issue punch cards, licenses, license stamps, and license tags. It may consign punch cards, licenses, license stamps, and license tags to license agents without receiving payment therefor, upon application of the license agent and upon the giving of a bond

or assigning a certificate of deposit, payable to the department, as provided in this article. It shall not consign any punch cards, licenses, license stamps, and license tags to any license agent who fails to submit the report required by subdivision (a) of Section 1055.5 within one month and 20 days following the last day of that calendar month or who otherwise fails to fully comply with Section 1055.5.

(b) A license agent authorized under subdivision (a) shall add a handling charge to the fees, which fees are prescribed in this code or in regulations adopted pursuant to this code, for applications, punch cards, licenses, license stamps, and license tags issued by the license agent in an amount that is 5 percent of the face value of the item rounded to the nearest five cents ($0.05).

(c) The handling charge added under subdivision (b) shall be incorporated into the total amount collected for issuing the punch card, license, license stamp, or license tag, but the handling charge shall not be included when determining license fees in accordance with Section 713. License agents may issue any punch card, license, license stamp, or license tag for any amount that is up to 10 percent less than the fee prescribed in this code or in regulations adopted pursuant to this code. The license agent shall remit to the department the full amount of the fees as prescribed in this code or in regulations adopted pursuant to this code for all punch cards, licenses, license stamps, or license tags issued.

(d) The handling charge required by subdivision (b) is the license agent's only compensation for services. No other additional fee or charge shall be made by the license agent for issuing punch cards, licenses, license stamps, or license tags authorized under this section.

(e) The department may designate a nonprofit organization, organized pursuant to the laws of this state, or the California chapter of a nonprofit organization, organized pursuant to the laws of another state, as a license agent for the sale of lifetime licenses issued pursuant to Sections 714, 3031.2, and 7149.2. These licenses may be sold by auction or by other methods and are not subject to the fee limitations prescribed in this code. An agent authorized to issue lifetime sport fishing licenses, lifetime hunting licenses, and lifetime sportsman's licenses under this subdivision is exempt from subdivisions (b) and (d). The license agent shall remit to the department all revenue derived from the sale of the lifetime licenses.

(f) In order to facilitate the prompt remittance of fees and more accurate accounting of licenses, license stamps, and license tags provided for issuance to license agents, the department shall provide them in books containing licenses, license stamps, or license tags that do not exceed the total fees for 20 resident sport fishing licenses. This subdivision does not apply to nonresident licenses and nonresident license tags.

(g) At any single business location, a license agent shall issue all items from a single book before commencing to issue licenses, license stamps, or license tags of the same series from another book.

(h) The department, alternatively, may provide for the issuance of punch cards, licenses, license stamps, and license tags to authorized license agents and shall collect, in cash or cashier's check, at the time the documents are provided an amount equal to the fees for all of the punch cards, licenses, license stamps, and license tags provided. Any license agent who pays the fees for punch cards, licenses, license stamps, and license tags provided is exempt from subdivisions (a) and (e) of Section 1055.5, Section 1056, and Section 1059. Punch cards, licenses, license stamps, and license tags provided pursuant to this subdivision and remaining unissued at the end of the license year may be returned to the department, within 60 days of their expiration date, for refund or credit, or a combination thereof.

(i) All unissued and expired punch cards, licenses, license stamps, and license tags shall be returned to the department. Any license agent who does not return them within one month and 20 days following the last day of the license year shall not be provided additional punch cards, licenses, license stamps, or license tags until the unissued and expired punch cards, licenses, license stamps, and license tags have been returned to the department. In addition, any unissued and expired item that is not returned within 60 days following the last day of the license year shall be billed to the license agent. Items may be returned for credit after the 60 days; however, the license agent shall pay interest and penalties on the returned items as prescribed in subdivision (b) of Section 1059. No credit shall be allowed after six months following the last day of the license year.

SEC. 3. Section 3031.2 is added to the Fish and Game Code, to read:

3031.2. (a) In addition to Sections 714 and 3031 and notwithstanding Section 3037, the department shall issue lifetime hunting licenses under this section. A lifetime hunting license authorizes the taking of birds and mammals anywhere in this state in accordance with the law for purposes other than profit for the life of the person to whom issued unless revoked for a violation of this code or regulations adopted under this code. A lifetime hunting license is not transferable. A lifetime hunting license does not include any special license tags, license stamps, or fees.

(b) A lifetime hunting license may be issued to residents of this state, as follows:

(1) To a person 62 years of age or over upon payment of a fee of three hundred dollars ($300) in 1998.

(2) To a person 40 years of age or over and less than 62 years of age upon payment of a fee of four hundred forty-five dollars ($445) in 1998.

(3) To a person 10 years of age or over and less than 40 years of age upon payment of a fee of four hundred ninety-five dollars ($495) in 1998.

(4) To a person less than 10 years of age upon payment of a fee of three hundred dollars ($300) in 1998.

(5) The department shall establish the fee for each license authorized under this section in 1999 and subsequent years. The license fee shall not be less than the fee authorized in 1998, and the fee shall not exceed the cost of a license if the license fee was adjusted pursuant to Section 713 with the base year of 1998.

(c) Nothing in this section requires a person under the age of 16 to obtain a license to take birds or mammals except as required by law.

(d) Nothing in this section exempts an applicant for a license from meeting other qualifications or requirements otherwise established by law for the privilege of sporthunting.

SEC. 4. Section 7149.2 of the Fish and Game Code is amended to read:

7149.2. (a) In addition to Sections 714 and 7149, the department shall issue a lifetime sport fishing license under this section. A lifetime sport fishing license authorizes the taking of fish, amphibia, or reptiles anywhere in this state in accordance with the law for purposes other than profit for the life of the person to whom issued unless revoked for a violation of this code or regulations adopted under this code. A lifetime sport fishing license is not transferable. A lifetime sport fishing license does not include any special license tags, license stamps, or fees.

(b) A lifetime sport fishing license may be issued to residents of this state, as follows:

(1) To a person 62 years of age or over upon payment of a fee of three hundred dollars ($300) in 1998.

(2) To a person 40 years of age or over and less than 62 years of age upon payment of a fee of four hundred forty-five dollars ($445) in 1998.

(3) To a person 10 years of age or over and less than 40 years of age upon payment of a fee of four hundred ninety-five dollars ($495) in 1998.

(4) To a person less than 10 years of age upon payment of a fee of three hundred dollars ($300) in 1998.

(c) Nothing in this section requires a person under the age of 16 years to obtain a license to take fish, amphibia, or reptiles for purposes other than profit.

(d) Nothing in this section exempts a license applicant from meeting other qualifications or requirements otherwise established by law for the privilege of sport fishing.

(e) The department shall establish the fee for each license authorized under this section in 1999 and subsequent years. The license fee shall not be less than the fee authorized in 1998, and the fee shall not exceed the cost of a license if the license fee was adjusted pursuant to Section 713 with the base year of 1998.

(f) Upon payment of a fee of one hundred fifty dollars ($150), a person holding a lifetime sport fishing license or lifetime sportsman's license shall be entitled annually to the privileges afforded to a person

holding a second-rod stamp issued pursuant to Section 7149.4, an ocean fishing enhancement stamp issued pursuant to paragraph (1) of subdivision (a) of Section 6596, one steelhead trout report restoration card issued pursuant to Section 7380, a striped bass stamp issued pursuant to Section 7360, and a salmon punch card issued pursuant to regulations adopted by the commission.

SEC. 5. Section 13005 of the Fish and Game Code is amended to read:

13005. (a) A person who received a valid lifetime sport fishing license or a valid lifetime sportsman's license prior to January 1, 1998, may obtain a refund of the difference, if any, between the amount paid for that license and the license fee in effect on January 1, 1998. A lifetime license holder requesting a refund shall submit a request for the refund to the department no later than December 1, 1998. No lifetime license fees shall be refunded after December 31, 1998. The department, prior to April 1, 1998, shall notify in writing each person who received a lifetime sport fishing license or a lifetime sportsman's license about the availability and conditions for obtaining a refund.

(b) Notwithstanding Section 13001, the money collected from fees for lifetime sportsman's licenses under Section 714, lifetime hunting licenses under Section 3031.2, and lifetime sport fishing licenses under Section 7149.2 shall be deposited, as follows:

(1) Twenty dollars ($20) for each lifetime license issued shall be deposited in the Fish and Game Preservation Fund for use in accordance with Section 711.

(2) The balance of the fees shall be deposited in the Lifetime License Trust Account which is hereby created in the Fish and Game Preservation Fund. Except as provided in this section, that principal amount of the money in the account from the fee for a lifetime license shall not be used, except for investment.

(c) The money in the Lifetime License Trust Account may be transferred and invested through the Surplus Money Investment Fund and all interest shall accrue to the account pursuant to subdivision (g) of Section 16475 of the Government Code.

(d) (1) Each year the department shall transfer from the Lifetime License Trust Account to the Fish and Game Preservation Fund an amount equal to the current amount of the annual resident hunting and the sport fishing license fee times the number of lifetime sportsman's licenses in force and effect on July 1 of that year.

(2) Each year the department shall transfer from the Lifetime License Trust Account to the Fish and Game Preservation Fund an amount equal to the current amount of the annual resident sport fishing license fee times the number of lifetime sport fishing licenses in force and effect on July 1 of that year.

(3) Each year the department shall transfer from the Lifetime License Trust Account to the Fish and Game Preservation Fund an amount equal to the current amount of the annual resident hunting

license fee times the number of lifetime hunting licenses in force and effect on July 1 of that year.

(4) Upon receipt of the fee prescribed by subdivision (f) of Section 7149.2, the department shall transfer into the appropriate account within the Fish and Game Preservation Fund an amount equal to one second-rod stamp issued pursuant to Section 7149.4, one ocean fishing enhancement stamp issued pursuant to paragraph (1) of subdivision (a) of Section 6596, one steelhead trout report-restoration card issued pursuant to Section 7380, one striped bass stamp issued pursuant to Section 7360, and one salmon punch card issued pursuant to regulations adopted by the commission. Each year the department shall transfer from the Lifetime License Trust Account to the appropriate account within the Fish and Game Preservation Fund an amount equal to the number of persons holding the additional privileges prescribed in subdivision (f) of Section 7149.2 in force and effect on January 1 of that year times the current fee for the second-rod stamp, ocean fishing enhancement stamp, steelhead trout report-restoration card, striped bass stamp, and salmon punch card. In addition, each year the department shall transfer from the Lifetime License Trust Account to the Fish and Game Preservation Fund an amount equal to 20 percent of the number of persons holding lifetime sport fishing and lifetime sportsman's licenses times the current fee for the second-rod fishing stamp.

(5) Upon receipt of the fee prescribed by subdivision (e) of Section 714, the department shall transfer into the appropriate account within the Fish and Game Preservation Fund an amount equal to one deer tag application issued pursuant to subdivision (a) of Section 4332 and one book of five wild pig tags issued pursuant to Section 4654. Each year the department shall transfer from the Lifetime License Trust Account to the appropriate account within the Fish and Game Preservation Fund an amount equal to the number of persons holding the additional privileges prescribed in subdivision (e) of Section 714 in force and effect on July 1 of that year times the current fee for a deer tag application issued pursuant to subdivision (a) of Section 4332 and one book of five wild pig tags issued pursuant to Section 4654.

(6) Upon receipt of the fee prescribed by subdivision (f) of Section 714, the department shall transfer into the appropriate account within the Fish and Game Preservation Fund an amount equal to one state duck stamp issued pursuant to subdivision (a) of Section 3700 and one upland game bird stamp issued pursuant to Section 3682. Each year the department shall transfer from the Lifetime License Trust Account to the appropriate account within the Fish and Game Preservation Fund an amount equal to the number of persons holding the additional privileges prescribed in subdivision (f) of Section 714 in force and effect on July 1 of that year times the current fee for a state duck stamp issued pursuant to

subdivision (a) of Section 3700 and an upland game bird stamp issued pursuant to Section 3682.

SEC. 6. On or before January 1, 2001, and January 1, 2003, the Department of Fish and Game shall prepare and submit a report to the Senate Committee on Natural Resources and Wildlife, the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Water, Parks and Wildlife, and the Assembly Committee on Budget with regard to the public's participation in the lifetime license programs established under Sections 714, 3031.2, and 7149.2 of the Fish and Game Code and the status of the Lifetime License Trust Account in the Fish and Game Preservation Fund.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 425

An act to amend Section 44241 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 44241 of the Health and Safety Code is amended to read:

44241. (a) Fee revenues generated under this chapter in the bay district shall be subvened to the bay district by the Department of Motor Vehicles after deducting its administrative costs pursuant to Section 44229.

(b) Fee revenues generated under this chapter shall be allocated by the bay district to implement the following mobile source and transportation control projects and programs that are included in the plan adopted pursuant to Sections 40233, 40717, and 40919:

(1) The implementation of ridesharing programs.

(2) The purchase or lease of clean fuel buses for school districts and transit operators.

(3) The provision of local feeder bus or shuttle service to rail and ferry stations and to airports.

(4) Implementation and maintenance of local arterial traffic management, including, but not limited to, signal timing, transit signal preemption, bus stop relocation and "smart streets."

(5) Implementation of rail-bus integration and regional transit information systems.

(6) Implementation of demonstration projects in congestion pricing of highways, bridges, and public transit, and low-emission vehicles.

(7) Implementation of a smoking vehicles program.

(8) Implementation of an automobile buy-back scrappage program operated by a governmental agency.

(9) (A) Implementation of bicycle facility improvement projects that are included in an adopted countywide bicycle plan or congestion management program.

(B) This paragraph shall become inoperative on January 1, 2000, unless a later enacted statute deletes or extends that date.

(c) Fee revenue generated under this chapter shall be allocated by the bay district for projects and programs specified in subdivision (b) to cities, counties, the Metropolitan Transportation Commission, transit districts, or any other public agency responsible for implementing one or more of the specified projects or programs. Fee revenues shall not be used for any planning activities that are not directly related to the implementation of a specific project or program.

(d) Not less than 40 percent of fee revenues shall be allocated to the entity or entities designated pursuant to subdivision (e) for projects and programs in each county within the bay district based upon the county's proportionate share of fee-paid vehicle registration.

(e) In each county, one or more entities may be designated as the overall program manager for the county by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county. The resolution shall specify the terms and conditions for the expenditure of funds. The entities so designated shall be allocated the funds pursuant to subdivision (d) in accordance with the terms and conditions of the resolution.

(f) Any county, or entity designated pursuant to subdivision (e), that receives funds pursuant to this section shall, at least once a year, hold one or more public meetings for the purpose of adopting criteria for expenditure of the funds and to review the expenditure of revenues received pursuant to this section by any designated entity.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level

of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 426

An act to add Section 124.1 to the Streets and Highways Code, relating to highways.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 124.1 is added to the Streets and Highways Code, to read:

124.1. (a) Upon completion by the department of a safety study and a determination by the director, with the concurrence of the Commissioner of the California Highway Patrol, that truck traffic attributable to the United States-Mexico border crossing at Tecate in San Diego County constitutes a safety hazard to schoolbus operations, the department shall determine methods of mitigating the safety hazard, including, but not limited to, prohibiting the use of truck tractor-trailer combinations on Route 94 from the communities of Boulevard and Manzanita to the junction of Route 54 (traveling east and west) during the hours of 6 a.m. to 9 a.m. and 2 p.m. to 5 p.m. on those days that public school districts utilize that portion of Route 94 to operate schoolbuses, as defined in Section 545 of the Vehicle Code.

(b) Any person operating a vehicle on Route 94 in violation of this section is guilty of an infraction punishable as provided in Section 42001 of the Vehicle Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 427

An act to amend Section 22840 of the Water Code, relating to water.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 22840 of the Water Code is amended to read:

22840. (a) Each director of a district may receive a salary fixed by an ordinance that is subject to referendum and adopted by the board in an amount that does not exceed the salary of a member of the Imperial County Board of Supervisors.

(b) The adoption of an ordinance pursuant to subdivision (a) is subject to Sections 20203, 20204, 20205, 20206, and 20207.

CHAPTER 428

An act to add Sections 12836 and 12837 to the Food and Agricultural Code, relating to pesticides.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 12836 is added to the Food and Agricultural Code, to read:

12836. (a) The director, by January 1, 1999, shall implement a program for the expedited registration of or for the expedited amendment of the registration of any pesticide classified by the United States Environmental Protection Agency as a "public health pesticide" or "antimicrobial pesticide" and that is determined by the director to have human health protection benefits that warrant eligibility for expedited processing. Nothing in this section limits the director's authority to provide expedited registration for any other pesticide product.

(b) For the purposes of this section, "expedited registration" and "expedited amendment of the registration" mean that the director shall review an application for registration or for amendment of a

registration concurrently in time with the review conducted by the United States Environmental Protection Agency. This section shall not be construed to require or authorize modification of any guidelines, protocols, or standards applicable to the review of an application for registration.

SEC. 2. Section 12837 is added to the Food and Agricultural Code, to read:

12837. (a) The director may waive the submission or review, or both, of efficacy data developed by a registrant as a prerequisite for registration for any antimicrobial pesticide product if all of the following conditions have been met with respect to each antimicrobial pesticide product:

(1) The director finds that the United States Environmental Protection Agency's guidelines, protocols, and standards of review in existence at the time the product was reviewed by the United States Environmental Protection Agency are consistent with, and no less stringent than, California guidelines, protocols, and standards and generally accepted scientific practices.

(2) The director finds that, with respect to the particular antimicrobial pesticide product reviewed under this section, the United States Environmental Protection Agency actually implemented the guidelines, protocols, and standards of review for which the director made the required finding pursuant to paragraph (1). In making this finding, the director may request any relevant studies or documentation from the registrant.

(b) Nothing in this section shall be construed as a limitation on the director to request or to review any efficacy data or studies or to subject any product to testing, at any time.

CHAPTER 429

An act to amend Sections 7362.1, 7390, 7391, 7392, 7393, 7394, 7395, and 7423.5 of, and to add and repeal Sections 7362.2 and 7362.3 of, the Business and Professions Code, relating to barbering and cosmetology, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 7362.1 of the Business and Professions Code is amended to read:

7362.1. A school of cosmetology approved by the board shall also meet all of the following:

(a) Possess the equipment and floor space necessary for comprehensive instruction of 25 cosmetology students or the number of students enrolled in the course, whichever is greater.

(b) Have entered on the roll of a proposed school of cosmetology at least 25 bona fide, full-time students for the cosmetology course. For purposes of this section, a bona fide, full-time student is a person who has been entered on the roll of a proposed school of cosmetology and has committed to attend a full course in cosmetology.

(c) Maintain a course of practical training and technical instruction for the full cosmetology course as specified in this chapter and in board regulations. A course of instruction in any branch of cosmetology shall be taught in a school of cosmetology.

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. 2. Section 7362.2 is added to the Business and Professions Code, to read:

7362.2. A school of barbering approved by the board shall also do all of the following:

(a) Possess the equipment and floor space necessary for comprehensive instruction of 15 barber students or the number of students enrolled in the course, whichever is greater.

(b) Have entered on the roll of a proposed school of barbering at least 15 bona fide, full-time students for the barbering course. For purposes of this section, a bona fide, full-time student is a person who has been entered on the roll of a proposed school of barbering and has committed to attend a full course in barbering.

(c) Maintain a course of practical training and technical instruction for the full barbering course as specified in this chapter and in board regulations.

(d) 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 7362.3 is added to the Business and Professions Code, to read:

7362.3. A school of electrology approved by the board shall also do all of the following:

(a) Possess the equipment and floor space necessary for comprehensive instruction of five electrology students or the number of students enrolled in the course, whichever is greater.

(b) Have entered on the roll of a proposed school of electrology at least five bona fide, full-time students for the electrology course. For purposes of this section, a bona fide, full-time student is a person who has been entered on the roll of a proposed school of electrology and has committed to attend a full course in electrology.

(c) Maintain a course of practical training and technical instruction for the full electrology course as specified in this chapter and in board regulations.

(d) 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. 4. Section 7390 of the Business and Professions Code is amended to read:

7390. A cosmetology or barbering instructor training course shall consist of not less than 600 hours of practical training and technical instruction in accordance with a curriculum established by board regulation.

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 7391 of the Business and Professions Code is amended to read:

7391. The board shall admit to examination for license as a cosmetology or barbering instructor any person who has made application to the board in the proper form, who has paid the fee required by this chapter, and who meets the following qualifications:

(a) Has completed the 12th grade or an accredited senior high school course of study in public schools of this state or its equivalent.

(b) Is not subject to denial pursuant to Section 480.

(c) Holds a valid license to practice cosmetology or barbering in this state.

(d) Has done at least one of the following:

(1) Completed a cosmetology or barbering instructor training course in an approved school in this state or equivalent training in an approved school in another state.

(2) Completed not less than the equivalent of 10 months of practice as a teacher assistant or teacher aide in a school approved by the board.

(3) Practiced cosmetology or barbering in a licensed establishment in this state for a period of one year within the three years immediately preceding application, or its equivalent in another state. An applicant using practical experience to qualify under this section shall submit an affidavit signed by his or her employers attesting to the qualifying experience.

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. 6. Section 7392 of the Business and Professions Code is amended to read:

7392. Each licensed instructor shall complete at least 30 clock hours of continuing education in the teaching of vocational education during each two-year licensing period. This section does not apply to an instructor who holds a credential to teach vocational education full time in a public school in this state.

For purposes of this section, programs designed for continuing education in the teaching of vocational education may include, but not be limited to, development of understanding and competency in the learning process, instructional techniques, curriculum and media, instructional evaluation, counseling and guidance, and the special needs of students.

The board shall adopt regulations establishing standards for the approval of continuing education courses and for the effective administration and enforcement of its continuing education requirements.

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. 7. Section 7393 of the Business and Professions Code is amended to read:

7393. As a condition of the renewal of the license of an instructor, the board may periodically require instructors to demonstrate current competence through continuing education as provided for in 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. 8. Section 7394 of the Business and Professions Code is amended to read:

7394. The board's continuing education requirements shall not apply to instructors whose licenses are on inactive status according to the records maintained by the board.

Instructors whose licenses are on inactive status may not be employed as instructors in schools approved by the board.

Instructors whose licenses are on inactive status must complete at least 30 hours of continuing education in the teaching of vocational education as a condition of reinstatement to active status.

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. 9. Section 7395 of the Business and Professions Code is amended to read:

7395. If an instructor with an active license status does not provide proof of compliance with the continuing education requirements provided for in this chapter within 45 days of a request

from the board, the instructor's license shall revert to inactive status until proof of compliance is provided to the board.

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. 10. Section 7423.5 of the Business and Professions Code is amended to read:

7423.5. The amounts of the fees payable under this chapter relating to licenses for instructor are as follows:

(a) The fee for instructor application, examination, and initial license shall be not more than fifty dollars ($50).

(b) The license renewal fee shall be not more than fifty dollars ($50).

(c) The license renewal delinquency fee shall be 50 percent of the renewal fee in effect on the date of renewal, notwithstanding Section 163.5.

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

In order to prevent a lapse in qualification standards for schools of cosmetology, it is necessary that this act take effect immediately.

CHAPTER 430

An act to amend Sections 49460, 49461, 49462, 49463, and 49465 of the Education Code, relating to pupils.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 49460 of the Education Code is amended to read:

49460. (a) The State Department of Education, the State Department of Health Services, and the State Department of Social Services shall jointly enter into a collaborative agreement with the California State University, the University of California, and California medical schools, to establish a standardized health assessment of the children within public schools, and develop a data base on the health of children who are representative of the state's

population. The California State University is responsible for coordinating this effort.

(b) The agreement shall address all of the following:

(1) Conducting the health assessment which may include the following:

(A) Anthropometric measures.

(B) Testing for physical fitness.

(C) Testing for chronic disease indicators by using the following methods:

(i) A survey of family health and medical history.

(ii) Blood pressure measurement.

(iii) A blood panel by participating pupils, on a voluntary basis, and with the written consent of the pupil's parent or guardian.

(D) Assessment of the nutritional status of participating pupils.

(E) Conducting a voluntary and anonymous survey relating to alcohol, drug, and tobacco use, and related diseases.

(2) Establishing a coordinating center at the California State University, in collaboration with the University of California and California medical schools, with pupil assessment sites at public schools.

(3) Summarizing the assessment findings that shall be made available to the public.

(4) Providing the assessment results to the State Department of Health Services, other state agencies, and to medical and education groups.

(c) No child shall be required to participate in a standardized health assessment program if the parent or guardian of that child objects to that participation because the program conflicts with the religious beliefs of the parent or guardian. The objection shall be made in a written form and shall be included in a letter submitted to the coordinating center, acknowledging parental notice of the health assessment.

SEC. 2. Section 49461 of the Education Code is amended to read:

49461. The coordinating center at the California State University shall select a sample of schools that is demographically and ethnically representative of the state's population to participate in the health assessment.

SEC. 3. Section 49462 of the Education Code is amended to read:

49462. The health assessment shall be conducted over a four-year period and shall be completed on or before December 31, 2002.

SEC. 4. Section 49463 of the Education Code is amended to read:

49463. The California State University shall notify the parent or guardian of each pupil for whom the assessment has detected health problems and shall recommend further consultation with a physician. If there is no physician available, the coordinating center shall direct the parent or guardian to an appropriate medical referral. Under no circumstances shall a school, the California State University, or the University of California be held liable for the

parent or guardian's action, or failure to take action on seeking medical care for the identified health problem. This section is not applicable to alcohol, drug, and tobacco use.

SEC. 5. Section 49465 of the Education Code is amended to read:

49465. (a) The agencies enumerated in Section 49460 shall only be required to implement this article upon the availability of funds received from the private sector and state funds appropriated for the purposes of this article in a total amount sufficient to cover all costs relating to the implementation and continuing administration of this article.

(b) The California State University shall notify all participating entities, including school districts, the State Department of Education, the State Department of Health Services, the State Department of Social Services, and the University of California when sufficient funds are available to meet the requirements specified in subdivision (a).

(c) All funds received from the private sector under this article shall be deposited in the State Treasury and are continuously appropriated to the California State University, which shall allocate those funds to participating agencies to reimburse those agencies for costs incurred in carrying out this article. The amounts allocated to the State Department of Education shall include amounts sufficient to reimburse participating school districts for any costs incurred pursuant to this article.

(d) No school district shall be required to participate in the assessments unless it is reimbursed from those funds for all costs incurred pursuant to this article.

(e) It is the intent of the Legislature that each fiscal year funds be appropriated to the California State University for the purposes of this article in an amount equal to the private sector funds received for those purposes for the relevant fiscal year, up to a maximum of one hundred twenty thousand dollars ($120,000) in state funds in any fiscal year. Under no circumstances shall state funds appropriated for the purposes of this article be apportioned in any fiscal year until the private funds necessary to fully fund the assessment required by this article have been received.

(f) Reimbursements pursuant to this section shall be limited to the amounts and purposes specified in the collaborative agreement described in Section 49460.

CHAPTER 431

An act to amend Section 20128.5 of the Public Contract Code, relating to public construction contracts.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 20128.5 of the Public Contract Code is amended to read:

20128.5. Notwithstanding any other provisions of this article, the board of supervisors may award individual annual contracts, none of which shall exceed three million dollars ($3,000,000), adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for any new construction. The contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. No project shall be performed under the contract except by order of the board of supervisors, or an officer acting pursuant to Section 20145.

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

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

CHAPTER 432

An act to add Sections 6523.6, 6523.7, and 6523.75 to the Government Code, relating to public health.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to do the following:

(a) Meet the challenges of the evolving health care market and carry out the essential governmental function of making health care services available to Medi-Cal eligible and medically indigent citizens served by health care districts, counties, and other public agencies.

(b) Authorize nonprofit hospitals to do all of the following:

(1) Engage in joint planning for health care services.

(2) Allocate health care services among the different facilities operated by the hospitals.

(3) Engage in joint purchasing, joint development and ownership of health care delivery, and financing programs.

(4) Consolidate or eliminate duplicative administrative, clinical, and medical services.

(5) Engage in joint contracting and negotiations with health plans.

(6) Take over cooperative actions in order to provide for the health care needs of the citizens they serve.

SEC. 2. Section 6523.6 is added to the Government Code, to read:

6523.6. (a) Notwithstanding any other provision of this chapter, a private, nonprofit hospital in a county of the 21st class may enter into a joint powers agreement with a public agency, as defined in Section 6500.

(b) Nonprofit hospitals and public agencies participating in a joint powers agreement entered into pursuant to subdivision (a) shall not reduce or eliminate any emergency services, as a result of that agreement, following the creation of the joint powers authority without a public hearing by the authority. The joint powers authority shall provide public notice of the hearing to the communities served by the authority not less than 14 days prior to the hearing and the notice shall contain a description of the proposed reductions or changes.

(c) Nothing in this section shall be construed to grant any power to any nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

SEC. 3. Section 6523.7 is added to the Government Code, to read:

6523.7. (a) Notwithstanding any other provision of this chapter, a private, nonprofit hospital in a county of the 33rd class may enter into a joint powers agreement with a public agency, as defined in Section 6500.

(b) Nonprofit hospitals and public agencies participating in a joint powers agreement entered into pursuant to subdivision (a) shall not reduce or eliminate any emergency services, as a result of that agreement, following the creation of the joint powers authority without a public hearing by the authority. The joint powers authority shall provide public notice of the hearing to the communities served by the authority not less than 14 days prior to the hearing and the notice shall contain a description of the proposed reductions or changes.

(c) Nothing in this section shall be construed to grant any power to any nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

SEC. 4. Section 6523.75 is added to the Government Code, to read:

6523.75. (a) Notwithstanding any other provision of this chapter, a nonprofit hospital in a county of the third class may enter into a joint powers agreement with any public agency, as defined in Section 6500.

(b) Nonprofit hospitals and public agencies participating in a joint powers agreement entered into pursuant to subdivision (a) shall not reduce or eliminate any emergency services, as a result of that agreement, following the creation of the joint powers authority without a public hearing by the authority.

(c) The joint powers authority shall provide public notice of the hearing to the communities served by the authority not less than 14 days prior to the hearing and the notice shall contain a description of the proposed reductions or changes.

(d) Nothing in this section shall be construed to grant any power to any nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

SEC. 5. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances facing health care providers and nonprofit hospitals in the Counties of Tulare, Kings, and San Diego.

CHAPTER 433

An act to amend Section 25892.1 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 25892.1 of the Public Utilities Code is amended to read:

25892.1. (a) The district board may impose a special tax pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. The special taxes shall be applied uniformly to all taxpayers or all real property within the district, or any portion of the district that is coterminous with the boundaries of a city or the boundaries of contiguous cities, including any properties added to the district, except that unimproved property may be taxed at a lower rate than improved property.

(b) The proceeds of the special taxes shall be used to provide, within the area taxed, for the operation, maintenance, or acquisition of any public improvement or utility for transportation purposes.

CHAPTER 434

An act to add and repeal Article 6.5 (commencing with Section 12414) to Chapter 1 of Part 6 of Division 2 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Article 6.5 (commencing with Section 12414) is added to Chapter 1 of Part 6 of Division 2 of the Insurance Code, to read:

Article 6.5. Antirebate Investigation and Enforcement Unit

12414. (a) The purpose of this article is to protect consumers and the title industry from the adverse effects of illegal rebates by facilitating an aggressive prevention, investigation, and enforcement program within the department dedicated to eliminating illegal rebates.

(b) For purposes of this article, "unit" means the Antirebate Investigation and Enforcement Unit established by Section 12414.1.

12414.1. There is created within the department the Antirebate Investigation and Enforcement Unit to enforce Article 6 (commencing with Section 12404).

12414.2. The commissioner shall ensure that the unit aggressively pursues all reported incidents of probable unlawful rebates and related activities, as specified in Article 6 (commencing with Section 12404), and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any persons licensed under the Business and Professions Code or Corporations Code who are suspected of actively engaging in that unlawful activity.

12414.4. Nothing contained in this article shall do any of the following:

(a) Preempt the authority of other law enforcement or licensing agencies to investigate and prosecute violations of law.

(b) Prevent or prohibit a person from voluntarily disclosing any information concerning violations of this article to any law enforcement or licensing agency governed by the Business and Professions Code or Corporations Code.

(c) Limit any of the powers granted to the department or the commissioner to investigate possible violations of Article 6 (commencing with Section 12404) and take appropriate action against wrongdoers.

12414.5. (a) The unit's cost of investigation and enforcement shall be borne by all title insurers, underwritten title companies, and controlled escrow companies authorized to transact the business of title insurance in this state. The total amount of title industry assessments to fund the unit's investigation and enforcement efforts shall not exceed two hundred eighty thousand dollars ($280,000) annually. The department shall assess each title insurer, underwritten title company, and controlled escrow company annually following the effective date of this article and on each subsequent anniversary of the effective date, a pro rata share of two hundred eighty thousand dollars ($280,000). Each title insurer's, underwritten title company's, and controlled escrow company's pro rata share of the total assessment shall be calculated by dividing their respective adjusted title and escrow incomes derived from their title insurance business conducted in California for the year preceding the assessment into the total adjusted title and escrow income generated in the state for the preceding calendar year by all title insurers, underwritten title companies, and controlled escrow companies.

(b) For the purposes of this section, the "adjusted title and escrow income" means the following:

(1) For a title insurer, it is all title insurance premiums for policies, guarantees, and endorsements issued in the state less any portion thereof retained by underwritten title companies, plus all escrow fees with respect to escrows conducted in the state.

(2) For an underwritten title company or controlled escrow company it is all title insurance premiums for policies, guarantees, and endorsements issued in the state less any portion thereof due a title insurer, plus all escrow fees with respect to escrows conducted in the state.

(c) All moneys received by the department from the assessment made pursuant to this section shall be deposited in the Title Insurance Fund, a special fund which is hereby created in the State Treasury. All moneys deposited in the fund shall be available for expenditure by the department, upon appropriation by the Legislature, for the exclusive support of investigation and enforcement relating to activities under Article 6 (commencing with Section 12404). To the extent that moneys received from the assessment made pursuant to this section are not sufficient to fund investigations and enforcement, other moneys appropriated to the department, if available, may be used, at the commission's discretion to fund those operations not covered by the assessments. Any money remaining in the Title Insurance Fund after the repeal of this article shall only be used for the purposes set forth in this article.

12414.7. Any title insurer, underwritten title company, and controlled escrow company licensed to conduct the business of title insurance in this state or any other person that believes that an unlawful rebate is being made shall send to the department, on a form prescribed by the department, the information requested by the form and any additional information relative to the factual circumstances of the unlawful rebate. The department shall review each report and undertake further investigation it deems necessary and proper to establish the validity of the allegations. The commissioner, upon conclusion of the investigation or after administrative action has been completed that results in a determination that an unlawful rebate has occurred, shall report the determination to the title insurer, underwritten title company, controlled escrow company, or person making the submission. If the commissioner is satisfied that the unlawful rebate has not occurred, he or she shall report that determination to the title insurer, underwritten title company, or controlled escrow company or person making the submission.

12414.12. This article shall become inoperative on the date three years after its effective date, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

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

In order to protect consumers and the title industry from the adverse effects of illegal rebates at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 435

An act to amend Section 18025 of the Education Code, relating to libraries, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 18025 of the Education Code is amended to read:

18025. (a) For the 1982–83 fiscal year and each fiscal year thereafter, the State Librarian shall determine the amount to which each public library is entitled for support of the library during the

fiscal year. The amount shall be equal to 10 percent of the cost of the foundation program as determined pursuant to Section 18022.

(b) If local revenues appropriated for a public library for the 1982–83 fiscal year and each fiscal year thereafter, including tax revenues made available under Chapter 282 of the Statutes of 1979, total less than 90 percent of the cost of the foundation program as determined pursuant to Section 18022, the state allocation for that fiscal year shall be reduced proportionately.

(c) If local revenues appropriated for a public library for the 1982–83 fiscal year and each fiscal year thereafter, including tax revenues made available under the provisions of Chapter 282 of the Statutes of 1979, total more than 90 percent of the cost of the foundation program as determined pursuant to Section 18022, the state allocation for that fiscal year shall remain at 10 percent of the cost of the foundation program as determined pursuant to Section 18022.

(d) In order for a public library to receive state funds under this chapter in the 1983–84 fiscal year and any fiscal year thereafter, the total amount of local revenues appropriated for the public library for that fiscal year, including tax revenues made available under Chapter 282 of the Statutes of 1979 and other revenues deemed to be local revenues according to Section 18023, shall be equal to at least the total amount of local revenues, as defined, appropriated for the public library in the previous fiscal year. State funds provided under this chapter shall supplement, but not supplant, local revenues appropriated for the public library.

(e) (1) Notwithstanding subdivision (d), or any other provision of law, in the 1993–94 fiscal year, any city, county, district, or city and county, that reduces local revenues appropriated for the public library for the 1993–94 fiscal year shall continue to receive state funds appropriated under this chapter for the 1993–94 fiscal year only, provided that the amount of the reduction to the appropriation to that public library for the 1993–94 fiscal year is no more than 20 percent of the 1992–93 fiscal year appropriation made to that public library as certified by the fiscal officer of the public library and transmitted to the State Librarian pursuant to Section 18023.

(2) Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, any city, county, district, or city and county may request from the State Librarian a waiver of the requirements of subdivision (d) or of paragraph (1) by demonstrating that the percentage of the reduction in local revenues appropriated for the public library is no greater than the percentage of the reduction of local revenues received by the city, county, district, or city and county operating the public library as a result of changes made to Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code by statutes enacted during or after the 1991–92 Regular Session having the effect of shifting property tax revenues from cities, counties, special districts, and redevelopment agencies to school districts and

community colleges. Requests for the waiver and the substantiating documentation shall be submitted to the State Librarian along with the annual report of appropriation required by Section 18023 or any other report of appropriations applying to public libraries required by any other provision of law.

(3) Commencing with the 1997–98 fiscal year, and each fiscal year thereafter, any city, county, district, or city and county may request from the State Librarian a waiver of the requirements of subdivision (d) by demonstrating that the percentage of reduction in local revenues appropriated for the public library is no greater than the percentage of reduction of local revenues received by the city, county, district, or city and county operating the public library as a result of the addition of Article XIII D, otherwise known as the Right to Vote on Taxes Act, to the California Constitution as approved by the voters at the November 5, 1996, general election. Requests for the waiver and the substantiating documentation shall be submitted to the State Librarian along with the annual report of appropriation required by Section 18023 or any other report of appropriations applying to public libraries required by any other provision of law.

(f) If the state allocations computed pursuant to this section exceed the total amount of funds appropriated for such purposes in any fiscal year, the State Librarian shall adjust on a pro rata basis public library allocations prescribed by this section so that the total amount in each fiscal year does not exceed this amount.

SEC. 2. Section 18025 of the Education Code is amended to read:

18025. (a) For the 1982–83 fiscal year and each fiscal year thereafter, the State Librarian shall determine the amount to which each public library is entitled for support of the library during the fiscal year. The amount shall be equal to 10 percent of the cost of the foundation program as determined pursuant to Section 18022.

(b) If local revenues appropriated for a public library for the 1982–83 fiscal year and each fiscal year thereafter, including tax revenues made available under Chapter 282 of the Statutes of 1979, total less than 90 percent of the cost of the foundation program as determined pursuant to Section 18022, the state allocation for that fiscal year shall be reduced proportionately. A proportional reduction in the state allocation as described in this subdivision shall not be made, however, commencing with the 1997–98 fiscal year and each fiscal year thereafter, if the amount appropriated to the Public Library Fund for that fiscal year is equal to or greater than the amount necessary to fund each public library in the amount it received for the prior fiscal year, thus providing the state's share of the cost of the foundation program to each library based only on its population served, as certified by the State Librarian. After the first fiscal year in which the proportional reduction is not made, no further reductions based on this subdivision shall be made in any future fiscal year. It is the intent of this subdivision to make this

change without harm to any library currently receiving an unreduced share of the state's cost of the foundation program.

(c) If local revenues appropriated for a public library for the 1982–83 fiscal year and each fiscal year thereafter, including tax revenues made available under the provisions of Chapter 282 of the Statutes of 1979, total more than 90 percent of the cost of the foundation program as determined pursuant to Section 18022, the state allocation for that fiscal year shall remain at 10 percent of the cost of the foundation program as determined pursuant to Section 18022.

(d) In order for a public library to receive state funds under this chapter in the 1983–84 fiscal year and any fiscal year thereafter, the total amount of local revenues appropriated for the public library for that fiscal year, including tax revenues made available under Chapter 282 of the Statutes of 1979 and other revenues deemed to be local revenues according to Section 18023, shall be equal to at least the total amount of local revenues, as defined, appropriated for the public library in the previous fiscal year. State funds provided under this chapter shall supplement, but not supplant, local revenues appropriated for the public library.

(e) (1) Notwithstanding subdivision (d), or any other provision of law, in the 1993–94 fiscal year, any city, county, district, or city and county, that reduces local revenues appropriated for the public library for the 1993–94 fiscal year shall continue to receive state funds appropriated under this chapter for the 1993–94 fiscal year only, provided that the amount of the reduction to the appropriation to that public library for the 1993–94 fiscal year is no more than 20 percent of the 1992–93 fiscal year appropriation made to that public library as certified by the fiscal officer of the public library and transmitted to the State Librarian pursuant to Section 18023.

(2) Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, any city, county, district, or city and county may request from the State Librarian a waiver of the requirements of subdivision (d) or of paragraph (1) by demonstrating that the percentage of the reduction in local revenues appropriated for the public library is no greater than the percentage of the reduction of local revenues received by the city, county, district, or city and county operating the public library as a result of changes made to Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code by statutes enacted during or after the 1991–92 Regular Session having the effect of shifting property tax revenues from cities, counties, special districts, and redevelopment agencies to school districts and community colleges. Requests for the waiver and the substantiating documentation shall be submitted to the State Librarian along with the annual report of appropriation required by Section 18023 or any other report of appropriations applying to public libraries required by any other provision of law.

(3) Commencing with the 1997-98 fiscal year, and each fiscal year thereafter, any city, county, district, or city and county may request from the State Librarian a waiver of the requirements of subdivision (d) by demonstrating that the percentage of reduction in local revenues appropriated for the public library is no greater than the percentage of reduction of local revenues received by the city, county, district, or city and county operating the public library as a result of the addition of Article XIIID, otherwise known as the Right to Vote on Taxes Act, to the California Constitution as approved by the voters at the November 5, 1996, general election. Requests for the waiver and the substantiating documentation shall be submitted to the State Librarian along with the annual report of appropriation required by Section 18023 or any other report of appropriations applying to public libraries required by any other provision of law.

(f) If that the state allocations computed pursuant to this section exceed the total amount of funds appropriated for purposes of this section in any fiscal year, the State Librarian shall adjust on a pro rata basis public library allocations prescribed by this section so that the total amount in each fiscal year does not exceed this amount.

SEC. 3. Section 2 of this bill incorporates amendments to Section 18025 of the Education Code proposed by both this bill and Assembly Bill 345. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, but this bill becomes operative first, (2) each bill amends Section 18025 of the Education Code, and (3) this bill is enacted after Assembly Bill 345, in which case Section 18025 of the Education Code as amended by Section 1 of this bill, shall remain operative only until the operative date of Assembly Bill 345, at which time Section 2 of this bill shall become operative.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit public libraries to take advantage of this legislation at the start of the 1997–98 fiscal year, it is necessary for this act to take effect immediately.

CHAPTER 436

An act to amend Sections 1760.5 and 1764.1 of the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 1760.5 of the Insurance Code is amended to read:

1760.5. (a) The provisions of this chapter limiting the insurance that may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(1) Reinsurance of the liability of an admitted insurer.

(2) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(3) Aircraft or spacecraft insurance.

(4) Insurance on property or operations of railroads engaged in interstate commerce.

(b) The insurance specified in paragraphs (2), (3), and (4) of subdivision (a) may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same manner as the license of a surplus line broker, except that in lieu of the bond required by Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Sections 1663 and 1665 for an insurance broker and only one fee shall be collected from one person for both licenses. The licensee in respect to the business shall be subject to all the provisions of this chapter except Sections 1761, 1763, 1765.1, and 1775.5.

(c) The commissioner may address to any licensed special lines' surplus lines broker a written request for full and complete information respecting the financial stability, reputation, and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance specified in paragraphs (2), (3), or (4) of subdivision (a). The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order in writing the licensee to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with that nonadmitted insurer on behalf of any

person. Any placement with that nonadmitted insurer made by a licensee after receipt of the order is a violation of this chapter. The commissioner may issue an order if he or she finds that a nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance is in an unsound financial condition, is disreputable, or is lacking in integrity. The order shall also include notice of a hearing to be held at a time and place fixed therein, which shall be not less than 20 nor more than 30 days from service of the order upon the licensee.

(d) The commissioner may, in respect to business written or placed under the provisions of this section, require information and reports thereof that the commissioner considers necessary, convenient, or advisable.

(e) Each placing of insurance in violation of this chapter is a misdemeanor.

(f) The commissioner may revoke, suspend, or deny any license granted pursuant to this code in accordance with the procedure provided in Article 13 (commencing with Section 1737) of Chapter 5, or any certificate of authority granted pursuant to this code in accordance with the procedure provided in Section 704 whenever the commissioner finds that the licensee or holder of the certificate has committed a violation of this section.

(g) The premium for insurance placed by or through a special lines' surplus line broker pursuant to this section shall not be subject to the tax imposed upon the broker based upon gross premiums paid for insurance placed under authority conferred by the license.

SEC. 2. Section 1764.1 of the Insurance Code is amended to read:

1764.1. (a) (1) Every nonadmitted insurer, in the case of insurance to be purchased by a resident of this state pursuant to Section 1760, and surplus line broker, in the case of any insurance with a nonadmitted carrier to be transacted by the surplus line broker, shall be responsible to ensure that, at the time of accepting an application for any insurance policy issued by a nonadmitted insurer, the signature of the applicant on the disclosure statement set forth in subdivision (b) is obtained. The surplus line broker shall maintain a copy of the signed disclosure statement in his or her records for a period of at least five years. These records shall be made available to the commissioner and the insured upon request. This disclosure shall be signed by the applicant, and is not subject to any limited power of attorney agreement between the applicant and an agent or broker, or a surplus line broker. The disclosure statement shall be in boldface 16-point type on a freestanding document. In addition, every policy issued by a nonadmitted insurer and every certificate evidencing the placement of insurance shall contain, or have affixed to it by the insurer or surplus line broker, the disclosure statement set forth in subdivision (b) in boldface 16-point type on the front page of the policy.

(2) In any case where the applicant has not received and completed the signed disclosure form required by this section, he or she may cancel the insurance so placed. The cancellation shall be on a pro rata basis as to premium, and the applicant shall be entitled to the return of any broker's fees charged for the placement.

(b) The following notice shall be provided to policyholders and applicants for insurance as provided by subdivision (a), and shall be printed in English and in the language principally used by the surplus line broker and nonadmitted insurer to advertise, solicit, or negotiate the sale and purchase of surplus line insurance. The surplus line broker and nonadmitted insurer shall use the appropriate bracketed language for application and issued policy disclosures:

"NOTICE:

1. THE INSURANCE POLICY THAT YOU [HAVE PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS.

2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED INSURERS.

3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

4. FOR ADDITIONAL INFORMATION ABOUT THE INSURER YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE, AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: _____."

(c) When a contract is issued to an industrial insured neither the nonadmitted insurer nor the surplus line broker is required to provide the notice required in this section except on the confirmation of insurance, the certificate of placement, or the policy, whichever is first provided to the insured, nor is the insurer or surplus line broker required to obtain the insured's signature. The producer shall ensure that the notice affixed to the confirmation of insurance, certificate of placement, or the policy is provided to the insured. The producer shall insert the current toll-free telephone number of the Department of Insurance as provided in paragraph 4 of the notice.

(1) An industrial insured is an insured:

(A) Which employs at least 25 employees on average during the prior 12 months; and

(B) Which has aggregate annual premiums for insurance for all risks other than workers' compensation and health coverage totaling no less than twenty-five thousand dollars ($25,000); or

(C) Which obtains insurance through the services of a full-time employee acting as an insurance manager or a continuously retained insurance consultant. A "continuously retained insurance consultant" does not include: (i) Any agent or broker through whom the insurance is being placed, (ii) any subagent or subproducer involved in the transaction, or (iii) any agent or broker which is a business organization employing or contracting with any person mentioned in clauses (i) and (ii).

(2) The surplus line broker shall be responsible to ensure that the applicant is an industrial insured. A surplus line broker who reasonably relies on information provided in good faith by the applicant, whether directly or through the producer, shall be deemed to be in compliance with this requirement.

(d) For purposes of compliance with the requirement of subdivision (a) that the signature of the applicant be obtained, the following shall apply:

(1) Where the insurance transaction is not conducted at an in-person, face-to-face meeting, the applicant's signature on the disclosure form may be transmitted by the applicant to the agent or broker via facsimile or comparable electronic transmittal.

(2) In the case of commercial insurance coverages, where an applicant requires that insurance coverage be bound immediately, either because existing coverage will lapse within two business days of the time the insurance is bound or because the applicant is required to have coverage in place within two business days, and the applicant cannot meet in person with the agent or broker to sign the disclosure form, the agent or broker may obtain the signature of the applicant within five days of binding coverage, provided that the applicant may cancel the insurance so placed within five days of receiving the disclosure form from the agent or broker. The cancellation shall be on a pro rata basis, and the applicant shall be entitled to the rescission or return of any broker's fees charged for the placement.

(e) Notwithstanding subdivision (a), this section shall not apply to insurance issued or delivered in this state by a nonadmitted Mexican insurer by and through a surplus line broker affording coverage exclusively in the Republic of Mexico on property located temporarily or permanently in, or operations conducted temporarily or permanently within, the Republic of Mexico.

SEC. 3. Section 1764.1 of the Insurance Code is amended to read:

1764.1. (a) (1) Every nonadmitted insurer, in the case of insurance to be purchased by a resident of this state pursuant to Section 1760, and surplus line broker, in the case of any insurance

with a nonadmitted carrier to be transacted by the surplus line broker, shall be responsible to ensure that, at the time of accepting an application for any insurance policy issued by a nonadmitted insurer, the signature of the applicant on the disclosure statement set forth in subdivision (b) is obtained. In fulfillment of this responsibility, the nonadmitted insurer and the surplus line broker may rely, if it is reasonable under all the circumstances to do so, on the disclosure statement received from any licensee involved in the transaction as prima facie evidence that the disclosure statement and appropriate signature from the applicant have been obtained. The surplus line broker shall maintain a copy of the signed disclosure statement in his or her records for a period of at least five years. These records shall be made available to the commissioner and the insured upon request. This disclosure shall be signed by the applicant, and is not subject to any limited power of attorney agreement between the applicant and an agent or broker, or a surplus line broker. The disclosure statement shall be in boldface 16-point type on a freestanding document. In addition, every policy issued by a nonadmitted insurer and every certificate evidencing the placement of insurance shall contain, or have affixed to it by the insurer or surplus line broker, the disclosure statement set forth in subdivision (b) in boldface 16-point type on the front page of the policy.

(2) In any case where the applicant has not received and completed the signed disclosure form required by this section, he or she may cancel the insurance so placed. The cancellation shall be on a pro rata basis as to premium, and the applicant shall be entitled to the return of any broker's fees charged for the placement.

(b) The following notice shall be provided to policyholders and applicants for insurance as provided by subdivision (a), and shall be printed in English and in the language principally used by the surplus line broker and nonadmitted insurer to advertise, solicit, or negotiate the sale and purchase of surplus line insurance. The surplus line broker and nonadmitted insurer shall use the appropriate bracketed language for application and issued policy disclosures:

"NOTICE:

1. THE INSURANCE POLICY THAT YOU [HAVE PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS.

2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED INSURERS.

3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR

CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

4. FOR ADDITIONAL INFORMATION ABOUT THE INSURER YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE, AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: _____."

(c) When a contract is issued to an industrial insured neither the nonadmitted insurer nor the surplus line broker is required to provide the notice required in this section except on the confirmation of insurance, the certificate of placement, or the policy, whichever is first provided to the insured, nor is the insurer or surplus line broker required to obtain the insured's signature. The producer shall ensure that the notice affixed to the confirmation of insurance, certificate of placement, or the policy is provided to the insured. The producer shall insert the current toll-free telephone number of the Department of Insurance as provided in paragraph 4 of the notice.

(1) An industrial insured is an insured:

(A) Which employs at least 25 employees on average during the prior 12 months; and

(B) Which has aggregate annual premiums for insurance for all risks other than workers' compensation and health coverage totaling no less than twenty-five thousand dollars ($25,000); or

(C) Which obtains insurance through the services of a full-time employee acting as an insurance manager or a continuously retained insurance consultant. A "continuously retained insurance consultant" does not include: (i) Any agent or broker through whom the insurance is being placed, (ii) any subagent or subproducer involved in the transaction, or (iii) any agent or broker which is a business organization employing or contracting with any person mentioned in clauses (i) and (ii).

(2) The surplus line broker shall be responsible to ensure that the applicant is an industrial insured. A surplus line broker who reasonably relies on information provided in good faith by the applicant, whether directly or through the producer, shall be deemed to be in compliance with this requirement.

(d) For purposes of compliance with the requirement of subdivision (a) that the signature of the applicant be obtained, the following shall apply:

(1) Where the insurance transaction is not conducted at an in-person, face-to-face meeting, the applicant's signature on the disclosure form may be transmitted by the applicant to the agent or broker via facsimile or comparable electronic transmittal.

(2) In the case of commercial insurance coverages, where an applicant requires that insurance coverage be bound immediately,

either because existing coverage will lapse within two business days of the time the insurance is bound or because the applicant is required to have coverage in place within two business days, and the applicant cannot meet in person with the agent or broker to sign the disclosure form, the agent or broker may obtain the signature of the applicant within five days of binding coverage, provided that the applicant may cancel the insurance so placed within five days of receiving the disclosure form from the agent or broker. The cancellation shall be on a pro rata basis, and the applicant shall be entitled to the rescission or return of any broker's fees charged for the placement.

(e) Notwithstanding subdivision (a), this section shall not apply to insurance issued or delivered in this state by a nonadmitted Mexican insurer by and through a surplus line broker affording coverage exclusively in the Republic of Mexico on property located temporarily or permanently in, or operations conducted temporarily or permanently within, the Republic of Mexico.

SEC. 4. Section 3 of this bill incorporates amendments to Section 1764.1 of the Insurance Code proposed by both this bill and AB 245. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 1764.1 of the Insurance Code, and (3) this bill is enacted after AB 245, in which case Section 2 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 437

An act to add Section 116751 to the Health and Safety Code, relating to water, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 116751 is added to the Health and Safety Code, to read:

116751. The Department of Fish and Game may not introduce a poison to a drinking water supply for purposes of fisheries management unless the State Department of Health Services determines that the activity will not have a permanent adverse impact on the quality of the drinking water supply or wells connected to the drinking water supply. In making this determination, the State Department of Health Services shall evaluate the short- and long-term health effects of the poison in drinking water, ensure that an alternative supply of drinking water is provided to the users of the drinking water supply while the activity takes place, and, in cooperation with the Department of Fish and Game, develop and implement a monitoring program to ensure that no detectable residuals of the poison, breakdown products, and other components of the poison formulation remain in the drinking water supply or adjoining wells after the activity is completed.

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

The Department of Fish and Game has decided to introduce a poison into Lake Davis, using the pesticide Nusyn-Noxfish, and has already begun to lower the water level in the lake. This bill would prohibit the Department of Fish and Game from continuing in its efforts to introduce a poison into the lake until and unless the State Department of Health Services determines that the activity will not have a permanent adverse impact on the quality of the drinking water supply or wells connected to the drinking water supply.

CHAPTER 438

An act to add Section 68083 to the Education Code, relating to postsecondary education.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

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

SECTION 1. Section 68083 is added to the Education Code, to read:

68083. (a) Any amateur student athlete in training at the United States Olympic Training Center in Chula Vista is entitled to resident

classification for tuition purposes until he or she has resided in the state the minimum time necessary to become a resident.

(b) "Amateur student athlete," for purposes of this section, means any student athlete who meets the eligibility standards established by the national governing body for the sport in which the athlete competes.

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 439

An act to add Sections 31789.3 and 31789.5 to the Government Code, relating to public employees.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 31789.3 is added to the Government Code, to read:

31789.3. (a) Upon the death of any person after retirement and while receiving a retirement allowance from this system, or any superseded system, there shall be paid to his or her estate or to the beneficiary as he or she shall nominate by written designation duly executed and filed with the board, an amount determined by the board of supervisors to be provided from contributions of the county or district. The board of supervisors shall, by resolution adopted by majority vote, fix and determine an amount that shall not exceed five thousand dollars ($5,000).

(b) This section applies to every member who dies after this section becomes operative whether he or she has retired before or after the operative date or effective date of this section.

(c) The death benefit provided by this section shall be paid in lieu of a payment under Section 31789 or 31789.1.

(d) This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by

majority vote, make the provisions of this section applicable in the county.

SEC. 2. Section 31789.5 is added to the Government Code, to read:

31789.5. (a) Upon the death of any person after retirement and while receiving a retirement allowance from this system, or any superseded system, there shall be paid to his or her estate, or to the beneficiary as he or she shall nominate by written designation duly executed and filed with the board, an amount determined by the board of supervisors. The board of supervisors shall, by resolution adopted by majority vote, fix and determine an amount that shall not exceed five thousand dollars ($5,000).

(b) This section applies to every member who dies after this section becomes operative whether he or she has retired before or after the operative date or effective date of this section.

(c) The death benefit provided by this section shall be paid in lieu of a payment under Section 31789 or 31789.1 and may be paid in part, from contributions of the county or district in accordance with Section 31789, and in part, from surplus earnings of the retirement system in accordance with Section 31789.1.

(d) This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county and until such time as the board of retirement, by resolution adopted by a majority vote, determines that its portion of the benefits may be financed from surplus earnings of the retirement fund.

(e) Upon adoption by any county providing benefits pursuant to this section, of Article 5.5 (commencing with Section 31510), only that portion of those benefits that is paid from surplus earnings described in Section 31592.2 shall be paid, instead, from the Supplemental Retiree Benefits Reserve established pursuant to Section 31510.8.

CHAPTER 440

An act to amend Section 10209.3 of, and to add Section 10113.4 to, the Insurance Code, relating to life insurance.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 10113.4 is added to the Insurance Code, to read:

10113.4. If a group life insurance policy contains a provision that makes a certificate holder's coverage contestable on the grounds of

suicide for a period following commencement of coverage, only the unexpired portion of that period shall be applied to a certificate holder's individual conversion policy of an equal or lesser amount of coverage.

SEC. 2. Section 10209.3 of the Insurance Code is amended to read:

10209.3. (a) Subject to the terms of the policy, or pursuant to an agreement between the insured, the group policyholder, and the insurer, any person insured under a group life insurance policy may make to any person, other than the policyholder, an assignment of all or any part of the incidents of ownership conferred on him or her by the policy or by law, including specifically, but not by way of limitation, the right to exercise the conversion privilege and the right to name a beneficiary.

The enactment of this section made at the 1969 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

(b) Notwithstanding subdivision (a), any person who has been diagnosed with a terminal illness shall have the right to make an absolute assignment for value of his or her interest in a policy or certificate of life insurance.

(c) The right of assignment in subdivision (b) shall not extend to situations in which the benefits of the policy or certificate of life insurance are used as collateral for a loan.

(d) The viatical broker shall notify the spouse of a terminally ill viator of the viatication.

CHAPTER 441

An act to add Section 11105.6 to the Penal Code, relating to criminal records.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. It is the intent of the Legislature in enacting this act that a licensed bail agent or bail bond licensee be furnished by local law enforcement with the information enumerated in Section 11105.6 of the Penal Code, as added by Section 2 of this act, in situations where a bench warrant has been issued for the client of the licensed bail agent or bail bond licensee.

SEC. 2. Section 11105.6 is added to the Penal Code, to read:

11105.6. Upon the request of a licensed bail agent or bail bond licensee, as described in Sections 1276 and 1276.5, a local law enforcement agency may furnish an individual's known aliases and booking photograph, information identifying whether the individual

has been convicted of any violent felony, as defined in subdivision (c) of Section 667.5, and an unaltered copy of the booking and property record, excluding any medical information, to the agent or licensee if all of the following circumstances exist:

(a) The information is from the record of a person for whom a bench warrant has been issued.

(b) The person described in subdivision (a) is a client of the agent or licensee.

(c) The agent or licensee pays to the law enforcement agency a fee equal to the cost of providing the information.

(d) Any information obtained pursuant to this section is confidential and the recipient bail agent or bail bond licensee shall not disclose its contents, other than for the purpose for which it was acquired. A violation of this subdivision is a misdemeanor.

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 442

An act to amend Sections 22351, 22355, 22356.5, and 22360 of, to add Section 22351.5 to, and to repeal and add Sections 22350 and 22352 of, the Business and Professions Code, to amend Sections 1985.3, 1985.6, and 1987.1 of the Code of Civil Procedure, to amend Section 4406 of the Commercial Code, and to amend Sections 1158, 1560, and 1563 of the Evidence Code, relating to civil procedure.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 22350 of the Business and Professions Code is repealed.

SEC. 2. Section 22350 is added to the Business and Professions Code, to read:

22350. (a) Any natural person who makes more than 10 services of process within this state during one calendar year, for specific

compensation or in expectation of specific compensation, where such compensation is directly attributable to the service of process, shall file and maintain a verified certificate of registration as a process server with the county clerk of the county in which he or she resides or has his or her principal place of business. Any corporation or partnership that derives or expects to derive compensation from service of process within this state shall also file and maintain a verified certificate of registration as a process server with the county clerk of the county in which the corporation or partnership has its principal place of business.

(b) This chapter shall not apply to any of the following:

(1) Any sheriff, marshal, or government employee who is acting within the course and scope of his or her employment.

(2) An attorney or his or her employees.

(3) Any person who is specially appointed by a court to serve its process.

(4) A licensed private investigator or his or her employees.

SEC. 3. Section 22351 of the Business and Professions Code is amended to read:

22351. (a) The certificate of registration of a registrant who is a natural person shall contain the following:

(1) The name, age, address, and telephone number of the registrant.

(2) A statement, signed by the registrant under penalty of perjury, that the registrant has not been convicted of a felony.

(3) A statement that the registrant has been a resident of this state for a period of one year immediately preceding the filing of the certificate.

(4) A statement that the registrant will perform his or her duties as a process server in compliance with the provisions of law governing the service of process in this state.

(b) The certificate of registration of a registrant who is a partnership or corporation shall contain the following:

(1) The names, ages, addresses, and telephone numbers of the general partners or officers.

(2) A statement, signed by the general partners or officers under penalty of perjury, that the general partners or officers have not been convicted of a felony.

(3) A statement that the partnership or corporation has been organized and existing continuously for a period of one year immediately preceding the filing of the certificate or a responsible managing employee, partner, or officer has been previously registered under this chapter.

(4) A statement that the partnership or corporation will perform its duties as a process server in compliance with the provisions of law governing the service of process in this state.

SEC. 4. Section 22351.5 is added to the Business and Professions Code, to read:

22351.5. (a) At the time of filing the initial certificate of registration, the registrant shall also submit two completed fingerprint cards, for submission to the Department of Justice and the Federal Bureau of Investigation, in order to verify that the registrant has not been convicted of a felony.

(b) If, after processing the completed fingerprint cards, the clerk is advised that the registrant has been convicted of a felony, the presiding judge of the Superior Court of the county in which the certificate of registration is maintained is authorized to review the criminal record and notify the registrant that the registration is revoked.

SEC. 5. Section 22352 of the Business and Professions Code is repealed.

SEC. 6. Section 22352 is added to the Business and Professions Code, to read:

22352. At the time of filing the initial certificate of registration, a registrant shall pay the following fees to the county clerk:

(a) A fee of one hundred dollars ($100).

(b) A fee to cover the actual costs of processing the completed fingerprint cards when submitted with the initial certificate of registration.

(c) A fee to cover the actual cost of issuing a registered process server identification card.

SEC. 7. Section 22355 of the Business and Professions Code is amended to read:

22355. (a) The county clerk shall maintain a register of process servers and assign a number and issue an identification card to each process server. Upon renewal of a certificate of registration, the same number shall be assigned, provided there is no lapse in the period of registration.

(b) The identification card shall be a card $3\frac{3}{8}$ inches by $2\frac{1}{4}$ inches and shall contain at the top the title, "Registered Process Server," followed by the registrant's name, address, registration number, date of expiration, and county of registration. In the case of a natural person, it shall also contain a photograph of the registrant in the lower left corner.

SEC. 8. Section 22356.5 of the Business and Professions Code is amended to read:

22356.5. (a) In addition to the information required by subdivision (b) of Section 22360, any proof of service of any process which is signed by an independent contractor of a registrant under this chapter shall indicate that the proof of service was signed as an independent contractor of a registered process server. The proof of service shall indicate the county of registration and the number assigned pursuant to Section 22355 of both the independent contractor and the entity registered under this chapter.

(b) No registrant shall permit any individual to sign any proof of service of any process as an independent contractor unless all of the following conditions are met:

(1) The independent contractor is performing pursuant to a written independent contractor agreement with the registrant.

(2) The independent contractor supplies proof of bonding under Section 22353, if applicable.

(3) The registrant exercises minimal supervision or control over the means of accomplishing the service of any process assigned by the registrant. The registrant may communicate a deadline for the service of process and request notification that such service has been completed.

(4) The registrant imposes no restrictions on the independent contractor's ability to perform services for others registered under this chapter.

(5) The independent contractor supplies proof that any required business licenses have been obtained.

(c) Persons not meeting the criteria of subdivision (b) shall be treated as employees of the registrant while persons meeting the criteria of subdivision (b) shall be treated as independent contractors.

(d) This section shall not preclude an independent determination of employment under any other provision of law.

SEC. 9. Section 22360 of the Business and Professions Code is amended to read:

22360. Any proof of service of any process which is signed by a registrant under this chapter shall indicate the county in which he or she is registered and the number assigned to him or her by Section 22355.

SEC. 10. Section 1985.3 of the Code of Civil Procedure is amended to read:

1985.3. (a) For purposes of this section, the following definitions apply:

(1) "Personal records" means the original or any copy of books, documents, or other writings pertaining to a consumer and which are maintained by any "witness" which is a physician, chiropractor, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, state or national bank, state or federal association (as defined in Section 5102 of the Financial Code), state or federal credit union, trust company, anyone authorized by this state to make or arrange loans that are secured by real property, security brokerage firm, insurance company, title insurance company, underwritten title company, escrow agent licensed pursuant to Division 6 (commencing with Section 17000) of the Financial Code or exempt from licensure pursuant to Section 17006 of the Financial Code, attorney, accountant, institution of the Farm Credit System, as specified in Section 2002 of Title 12 of the United States Code, or telephone corporation which is a public utility, as defined in Section

216 of the Public Utilities Code, or psychotherapist, as defined in Section 1010 of the Evidence Code, or a private or public preschool, elementary school, or secondary school.

(2) "Consumer" means any individual, partnership of five or fewer persons, association, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(4) "Deposition officer" means a person who meets the qualifications specified in paragraph (3) of subdivision (d) of Section 2020.

(b) The date specified in a subpoena duces tecum for the production of personal records shall not be less than 15 days from the date the subpoena is issued. Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena duces tecum, of the affidavit supporting the issuance of the subpoena, and of the notice described in subdivision (e). This service shall be made as follows:

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the consumer is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the consumer or by his or her attorney of record. The witness may presume that any attorney purporting to sign the authorization on behalf of the consumer acted with the consent of the consumer.

(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time to locate and produce the records or copies thereof.

Except as to records subpoenaed for a criminal proceeding or records subpoenaed during trial, a subpoena duces tecum served upon a witness with records in more than one location shall be served no less than 10 days prior to the date specified for production, unless good cause is shown pursuant to subdivision (h).

(e) Every copy of the subpoena duces tecum and affidavit served on a consumer or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court or serve a written objection as provided in subdivision (g) prior to the date specified for production on the subpoena; and (3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) A subpoena duces tecum for personal records maintained by a telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code.

(g) Any consumer whose personal records are sought by a subpoena duces tecum and who is a party to the civil action in which this subpoena duces tecum is served may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and deposition officer prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to quash or modify the subpoena duces tecum.

Any other consumer whose personal records are sought by a subpoena duces tecum may, prior to the date of production, serve on the requesting party and the witness a written objection that specifies the specific grounds on which production of the personal records should be prohibited.

No witness or deposition officer shall be required to produce personal records after receipt of notice that such a motion has been brought, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected. No witness shall be required to produce personal records after service of a written objection by a nonparty consumer, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected.

The party requesting a consumer's personal records may bring a motion under Section 1987.1 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the personal records and the consumer or the consumer's attorney.

(h) Upon good cause shown and provided that the rights of witnesses and consumers are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(i) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular consumer or consumers and which requires a custodian of records to delete all information which would in any way identify any consumer whose records are to be produced.

(j) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(k) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the personal records sought by a subpoena duces tecum.

SEC. 11. Section 1985.6 of the Code of Civil Procedure is amended to read:

1985.6. (a) For purposes of this section, the following definitions apply:

(1) "Employment records" means the original or any copy of books, documents, or other writings pertaining to the employment of any employee maintained by the current or former employer of the employee.

(2) "Employee" means any individual who is or has been employed by a witness subject to a subpoena duces tecum.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity

pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(4) "Deposition officer" means a person who meets the qualifications specified in paragraph (3) of subdivision (d) of Section 2020.

(b) The date specified in a subpoena duces tecum for the production of employment records shall not be less than 15 days from the date the subpoena is issued. Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the affidavit supporting the issuance of the subpoena, if any; and the notice described in subdivision (e). This service shall be made as follows:

(1) To the employee personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the employee is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor, or with whom the minor resides, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the employment records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall either:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the employee or by his or her attorney of record. The witness may presume that the attorney purporting to sign the authorization on behalf of the employee acted with the consent of the employee.

(d) A subpoena duces tecum for the production of employment records shall be served in sufficient time to allow the witness a reasonable time to locate and produce the records or copies thereof.

Except as to records subpoenaed for a criminal proceeding or records subpoenaed during trial, a subpoena duces tecum served upon a witness with records in more than one location shall be served no less than 10 days prior to the date specified for production, unless good cause is shown pursuant to subdivision (g).

(e) Every copy of the subpoena duces tecum and affidavit served on an employee or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) employment records about the employee are being sought from the witness named on the subpoena; (2) the employment records may be protected by a right of privacy; (3) if the employee objects to the witness furnishing the records to the party seeking the records the employee shall file papers with the court prior to the date specified for production on the subpoena; and (4) if the subpoenaing party does not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the employee's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) Any employee whose employment records are sought by a subpoena duces tecum may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and the deposition officer at least five days prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to quash or modify the subpoena duces tecum.

Any nonparty employee whose employment records are sought by a subpoena duces tecum may, prior to the date of production, serve on the requesting party and the witness a written objection that specifies the specific grounds on which production of the employment records should be prohibited.

No witness shall be required to produce employment records after receipt of notice that such a motion has been brought, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and employees affected. No witness shall be required to produce employment records after service of a written objection by a nonparty employee, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and employees affected.

The party requesting an employee's employment records may bring a motion under subdivision (c) of Section 1987 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the employment records and the employee or the employee's attorney.

(g) Upon good cause shown and provided that the rights of witness and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(h) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular employee or employees and which requires a custodian of records to delete all information which would in any way identify any employee whose records are to be produced.

(i) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

SEC. 12. Section 1987.1 of the Code of Civil Procedure is amended to read:

1987.1. When a subpoena requires the attendance of a witness or the production of books, documents or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by the party, the witness, or any consumer described in Section 1985.3, or upon the court's own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the parties, the witness, or the consumer from unreasonable or oppressive demands including unreasonable violations of a witness's or consumer's right of privacy. Nothing herein shall require any witness or party to move to quash, modify, or condition any subpoena duces tecum of personal records of any consumer served under paragraph (1) of subdivision (b) of Section 1985.3.

SEC. 13. Section 4406 of the Commercial Code, as amended by Section 29 of Chapter 589 of the Statutes of 1993, is amended to read:

4406. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items, it shall provide in the statement of account the telephone number that the customer may call to request an item or a legible copy thereof pursuant to subdivision (b).

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank shall provide in a reasonable time either the item or, if the

item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or a legible copy thereof with respect to each statement of account sent to the customer.

(c) If a bank sends or makes available a statement of account or items pursuant to subdivision (a), the customer shall exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer shall promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subdivision (c), the customer is precluded from asserting any of the following against the bank:

(1) The customer's unauthorized signature or any alteration on the item if the bank also proves that it suffered a loss by reason of the failure.

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subdivision (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subdivision (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subdivision (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subdivision (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subdivision, the payer bank may not recover for breach of warranty under Section 4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

(g) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that date.

SEC. 14. Section 4406 of the Commercial Code, as amended by Section 30 of Chapter 589 of the Statutes of 1993, is amended to read:

4406. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer to identify the items paid. If the bank does not return the items, it shall provide in the statement of account the telephone number that the customer may call to request an item or a legible copy thereof pursuant to subdivision (b).

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank shall provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or a legible copy thereof with respect to each statement of account sent to the customer.

(c) If a bank sends or makes available a statement of account or items pursuant to subdivision (a), the customer shall exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer shall promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subdivision (c), the customer is precluded from asserting any of the following against the bank:

(1) The customer's unauthorized signature or any alteration on the item if the bank also proves that it suffered a loss by reason of the failure.

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subdivision (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with

subdivision (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subdivision (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subdivision (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subdivision, the payer bank may not recover for breach of warranty under Section 4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

(g) This section shall become operative on January 1, 2001.

SEC. 15. Section 1158 of the Evidence Code is amended to read:

1158. Whenever, prior to the filing of any action or the appearance of a defendant in an action, an attorney at law or his or her representative presents a written authorization therefor signed by an adult patient, by the guardian or conservator of his or her person or estate, or, in the case of a minor, by a parent or guardian of the minor, or by the personal representative or an heir of a deceased patient, or a copy thereof, a physician and surgeon, dentist, registered nurse, dispensing optician, registered physical therapist, podiatrist, licensed psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, or pharmacist or pharmacy, duly licensed as such under the laws of the state, or a licensed hospital, shall make all of the patient's records under his, hers or its custody or control available for inspection and copying by the attorney at law or his, or her, representative, promptly upon the presentation of the written authorization.

No copying may be performed by any medical provider or employer enumerated above, or by an agent thereof, when the requesting attorney has employed a professional photocopier or anyone identified in Section 22451 of the Business and Professions Code as his or her representative to obtain or review the records on his or her behalf. The presentation of the authorization by the agent on behalf of the attorney shall be sufficient proof that the agent is the attorney's representative.

Failure to make the records available, during business hours, within five days after the presentation of the written authorization, may subject the person or entity having custody or control of the records to liability for all reasonable expenses, including attorney's fees, incurred in any proceeding to enforce this section.

All reasonable costs incurred by any person or entity enumerated above in making patient records available pursuant to this section may be charged against the person whose written authorization required the availability of the records.

"Reasonable cost," as used in this section, shall include, but not be limited to, the following specific costs: ten cents ($0.10) per page for standard reproduction of documents of a size $8^1/_2$ by 14 inches or less; twenty cents ($0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to an authorization; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of sixteen dollars ($16) per hour per person, computed on the basis of four dollars ($4) per quarter hour or fraction thereof; actual postage charges; and actual costs, if any, charged to the witness by a third person for the retrieval and return of records held by that third person.

Where the records are delivered to the attorney or the attorney's representative for inspection or photocopying at the record custodian's place of business, the only fee for complying with the authorization shall not exceed fifteen dollars ($15), plus actual costs, if any, charged to the record custodian by a third person for retrieval and return of records held offsite by the third person.

SEC. 16. Section 1560 of the Evidence Code is amended to read:

1560. (a) As used in this article:

(1) "Business" includes every kind of business described in Section 1270.

(2) "Record" includes every kind of record maintained by such a business.

(b) Except as provided in Section 1564, when a subpoena duces tecum is served upon the custodian of records or other qualified witness of a business in an action in which the business is neither a party nor the place where any cause of action is alleged to have arisen, and the subpoena requires the production of all or any part of the records of the business, it is sufficient compliance therewith if the custodian or other qualified witness, within five days after the receipt of the subpoena in any criminal action or within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness, or within 15 days after the receipt of the subpoena in any civil action or within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness, delivers by mail or otherwise a true, legible, and durable copy of all the records described in the subpoena to the clerk of the court or to the judge if there be no clerk or to such other person as described in subdivision (c) of Section 2026 of the Code of Civil Procedure, together with the affidavit described in Section 1561.

(c) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness, and date of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of such court, or to the judge thereof if there be no clerk.

(2) If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business.

(3) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(d) Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are original documents and which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received. Records which are copies may be destroyed.

(e) As an alternative to the procedures described in subdivisions (b), (c), and (d), the subpoenaing party may direct the witness to make the records available for inspection or copying by the party's attorney or the attorney's representative at the witness' business address under reasonable conditions during normal business hours. Normal business hours, as used in this subdivision, means those hours that the business of the witness is normally open for business to the public. It shall be the responsibility of the attorney's representative to deliver any copy of the records as directed in the subpoena.

SEC. 17. Section 1563 of the Evidence Code is amended to read:

1563. (a) This article shall not be interpreted to require tender or payment of more than one witness fee and one mileage fee or other charge unless there is an agreement to the contrary.

(b) All reasonable costs incurred in a civil proceeding by any witness which is not a party with respect to the production of all or any part of business records the production of which is requested pursuant to a subpoena duces tecum may be charged against the party serving the subpoena duces tecum.

(1) "Reasonable cost," as used in this section, shall include, but not be limited to, the following specific costs: ten cents ($0.10) per page for standard reproduction of documents of a size $8^1/_2$ by 14 inches or less; twenty cents ($0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to a subpoena; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of sixteen dollars ($16) per hour per person, computed on the basis of four dollars ($4) per quarter hour or fraction thereof; actual postage charges; and actual costs, if any,

charged to the witness by a third person for the retrieval and return of records held by that third person.

(2) The requesting party shall not be required to pay those costs or any estimate thereof prior to the time the records are available for delivery pursuant to the subpoena, but the witness may demand payment of costs pursuant to this section simultaneous with actual delivery of the subpoenaed records, and until such time as payment is made, is under no obligation to deliver the records.

(3) The witness shall submit an itemized statement for the costs to the requesting party setting forth the reproduction and clerical costs incurred by the witness. Upon demand by the requesting party, the witness shall furnish a statement setting forth the actions taken by the witness in justification of the costs.

(4) The requesting party may petition the court in which the action is pending to recover from the witness all or a part of the costs paid to the witness, or to reduce all or a part of the costs charged by the witness, pursuant to this subdivision, on the grounds that such costs were excessive. Upon the filing of the petition the court shall issue an order to show cause and from the time the order is served on the witness the court has jurisdiction over the witness. The court may hear testimony on the order to show cause and if it finds that the costs demanded and collected, or charged but not collected, exceed the amount authorized by this subdivision, it shall order the witness to remit to the requesting party, or reduce its charge to the requesting party by an amount equal to, the amount of the excess. In the event that the court finds the costs excessive and charged in bad faith by the witness, the court shall order the witness to remit the full amount of the costs demanded and collected, or excuse the requesting party from any payment of costs charged but not collected, and the court shall also order the witness to pay the requesting party the amount of the reasonable expenses incurred in obtaining the order including attorney's fees. If the court finds the costs were not excessive, the court shall order the requesting party to pay the witness the amount of the reasonable expenses incurred in defending the petition, including attorney's fees.

(5) If a subpoena is served to compel the production of business records and is subsequently withdrawn, or is quashed, modified or limited on a motion made other than by the witness, the witness shall be entitled to reimbursement pursuant to paragraph (1) for all costs incurred in compliance with the subpoena to the time that the requesting party has notified the witness that the subpoena has been withdrawn or quashed, modified or limited. In the event the subpoena is withdrawn or quashed, if those costs are not paid within 30 days after demand therefor, the witness may file a motion in the court in which the action is pending for an order requiring payment, and the court shall award the payment of expenses and attorney's fees in the manner set forth in paragraph (4).

(6) Where the records are delivered to the attorney or the attorney's representative for inspection or photocopying at the witness' place of business, the only fee for complying with the subpoena shall not exceed fifteen dollars ($15), plus actual costs, if any, charged to the witness by a third person for retrieval and return of records held offsite by the third person. If the records are retrieved from microfilm, the reasonable cost, as defined in paragraph (1), shall also apply.

(c) When the personal attendance of the custodian of a record or other qualified witness is required pursuant to Section 1564, in a civil proceeding, he or she shall be entitled to the same witness fees and mileage permitted in a case where the subpoena requires the witness to attend and testify before a court in which the action or proceeding is pending and to any additional costs incurred as provided by subdivision (b).

SEC. 18. 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 443

An act to amend Sections 914, 933, and 933.05 of, and to add Section 938.4 to, the Penal Code, relating to grand juries.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. This act shall be known and may be cited as the Grand Jury Training, Communication, and Efficiency Act of 1997.

SEC. 2. It is the intent of the Legislature to encourage grand juries that consider or take action on civil matters to communicate more efficiently with the subjects of their investigations in an effort to enhance the likelihood of implementation of the reports of these grand juries.

SEC. 3. Section 914 of the Penal Code is amended to read:

914. (a) When the grand jury is impaneled and sworn, it shall be charged by the court. In doing so, the court shall give the grand jurors such information as it deems proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.

(b) To assist a grand jury in the performance of its statutory duties regarding civil matters, the court, in consultation with the district attorney, the county counsel, and at least one former grand juror, shall ensure that a grand jury that considers or takes action on civil matters receives training that addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority.

(c) Any costs incurred by the court as a result of this section shall be absorbed by the court or the county from existing resources.

SEC. 4. Section 933 of the Penal Code is amended to read:

933. (a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. One copy of each report found to be in compliance with this title shall be placed on file with the county clerk and remain on file in the office of the county clerk. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court,

with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(c) As used in this section "agency" includes a department.

SEC. 5. Section 933.05 of the Penal Code is amended to read:

933.05. (a) For purposes of subdivision (b) 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 (b) 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 head 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 agency or department headed by an elected officer, both the agency or 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 agency or department head shall address all aspects of the

findings or recommendations affecting his or her agency or 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) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) 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 presiding 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. 6. Section 938.4 is added to the Penal Code, to read:

938.4. The superior court shall arrange for a suitable meeting room and other support as the court determines is necessary for the grand jury. Any costs incurred by the court as a result of this section shall be absorbed by the court or the county from existing resources.

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

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

CHAPTER 444

An act to add Section 13515 to the Penal Code, relating to crime prevention.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 13515 is added to the Penal Code, to read:

13515. Every city police officer or deputy sheriff at a supervisory level and below who is assigned field or investigative duties shall complete an elder abuse training course certified by the Commission on Peace Officer Standards and Training by January 1, 1999, or within 18 months of assignment to field duties. Completion of the course may be satisfied by telecourse, video training tape, or other instruction. The training shall, at a minimum, address relevant laws, recognition, reporting requirements and procedures, neglect, and fraud. The course may be presented as part of a training program that includes other subjects or courses.

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 445

An act to amend Sections 1281.6, 1281.9, 1282, and 1286.2 of the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 1281.6 of the Code of Civil Procedure is amended to read:

1281.6. If the arbitration agreement provides a method of appointing an arbitrator, that method shall be followed. If the arbitration agreement does not provide a method for appointing an arbitrator, the parties to the agreement who seek arbitration and against whom arbitration is sought may agree on a method of appointing an arbitrator and that method shall be followed. In the absence of an agreed method, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails to act and his or her successor has not been appointed, the court, on petition of a party to the arbitration agreement, shall appoint the arbitrator.

When a petition is made to the court to appoint a neutral arbitrator, the court shall nominate five persons from lists of persons supplied jointly by the parties to the arbitration or obtained from a governmental agency concerned with arbitration or private disinterested association concerned with arbitration. The parties to the agreement who seek arbitration and against whom arbitration is sought may within five days of receipt of notice of the nominees from the court jointly select the arbitrator whether or not the arbitrator is among the nominees. If the parties fail to select an arbitrator within the five-day period, the court shall appoint the arbitrator from the nominees.

All neutral arbitrators shall comply with the requirements of subdivision (a) of Section 1297.121, which requirements shall apply to every agreement to arbitrate pursuant to this title.

SEC. 2. Section 1281.9 of the Code of Civil Procedure is amended to read:

1281.9. (a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, subject only to the disclosure requirements of law, the proposed neutral arbitrator shall disclose in writing within 10 calendar days of service of notice of the proposed nomination or appointment, to all parties, all of the following:

(1) The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for any party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(2) The names of the parties to all prior or pending noncollective bargaining cases involving any party to the arbitration or lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party not a party to the pending arbitration as "claimant" or"respondent" if the party is an individual and not a business or corporate entity.

(3) Any attorney-client relationship the proposed neutral arbitrator has or had with any party or lawyer for a party to the arbitration proceeding.

(4) Any professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living

in the household has or has had with any party to the arbitration proceeding or lawyer for a party.

(b) A proposed neutral arbitrator shall be disqualified if he or she fails to comply with subdivision (a) and any party entitled to receive the disclosure serves a notice of disqualification within 15 calendar days after the proposed nominee or appointee fails to comply with subdivision (a). A proposed neutral arbitrator shall be deemed to have complied with subdivision (a) with respect to any arbitration commenced prior to January 1, 1995, if the person declares in writing that he or she has disclosed all required information pertaining to those arbitrations within his or her knowledge or possession and has made a good faith effort to obtain the required information from any arbitration service administering those prior cases.

(c) (1) If the proposed neutral arbitrator complies with subdivision (a), the proposed neutral arbitrator shall be disqualified on the basis of the disclosure statement after any party entitled to receive the disclosure serves a notice of disqualification, within 15 calendar days after service of the disclosure statement.

(2) A party shall have the right to disqualify one court-appointed arbitrator without cause in any one arbitration, and may petition the court to disqualify a subsequent appointee only upon a showing of cause.

(d) The right of a party to disqualify a proposed neutral arbitrator pursuant to this section shall be waived if the party fails to serve the notice pursuant to the times set forth in this section, unless the proposed nominee or appointee makes a material omission or material misrepresentation in his or her disclosure. In no event may a notice of disqualification be given after a hearing of any contested issue of fact relating to the merits of the claim or after any ruling by the arbitrator regarding any contested matter. Nothing in this subdivision shall limit the right of a party to vacate an award pursuant to Section 1286.2, or to disqualify an arbitrator pursuant to any other law or statute.

(e) An arbitrator shall disclose to all parties the existence of any grounds specified in Section 170.1 for disqualification of a judge; and, if any such ground exists, shall disqualify himself or herself upon demand of any party made before the conclusion of the arbitration proceeding. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or their respective representatives.

(f) For purposes of this section, "lawyer for a party" includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.

(g) For purposes of this section, "prior cases" means noncollective bargaining cases in which an arbitration award was rendered within one of the following time periods:

(1) Three years prior to the date of the proposed nomination or appointment if the proposed nomination or appointment occurs on or between January 1, 1995, and December 31, 1995.

(2) Four years prior to the date of the proposed nomination or appointment if the proposed nomination or appointment occurs on or between January 1, 1996, and December 31, 1996.

(3) Five years prior to the date of the proposed nomination or appointment if the proposed nomination or appointment occurs on or after January 1, 1997.

(h) For purposes of this section, "any arbitration" does not include an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

SEC. 3. Section 1282 of the Code of Civil Procedure is amended to read:

1282. Unless the arbitration agreement otherwise provides, or unless the parties to the arbitration otherwise provide by an agreement which is not contrary to the arbitration agreement as made or as modified by all of the parties thereto:

(a) The arbitration shall be by a single neutral arbitrator.

(b) If there is more than one arbitrator, the powers and duties of the arbitrators, other than the powers and duties of a neutral arbitrator, may be exercised by a majority of them if reasonable notice of all proceedings has been given to all arbitrators.

(c) If there is more than one neutral arbitrator:

(1) The powers and duties of a neutral arbitrator may be exercised by a majority of the neutral arbitrators.

(2) By unanimous agreement of the neutral arbitrators, the powers and duties may be delegated to one of their number but the power to make or correct the award may not be so delegated.

(d) If there is no neutral arbitrator, the powers and duties of a neutral arbitrator may be exercised by a majority of the arbitrators.

SEC. 4. Section 1286.2 of the Code of Civil Procedure is amended to read:

1286.2. Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:

(a) The award was procured by corruption, fraud or other undue means.

(b) There was corruption in any of the arbitrators.

(c) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

(d) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

(e) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.

(f) An arbitrator making the award was subject to disqualification upon grounds specified in Section 1281.9, but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.

SEC. 5. Section 1286.2 of the Code of Civil Procedure is amended to read:

1286.2. Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:

(a) The award was procured by corruption, fraud or other undue means.

(b) There was corruption in any of the arbitrators.

(c) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

(d) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

(e) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.

(f) An arbitrator making the award was subject to disqualification upon grounds specified in Section 1281.9, but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.

(g) As provided in Section 1286.5.

SEC. 6. Section 5 of this bill incorporates amendments to Section 1286.2 of the Code of Civil Procedure proposed by both this bill and SB 19. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 1286.2 of the Code of Civil Procedure, and (3) this bill is enacted after SB 19, in which case Section 4 of this bill shall not become operative.

CHAPTER 446

An act to amend Section 830.31 of the Penal Code, relating to peace officers.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 830.31 of the Penal Code is amended to read:

830.31. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized, and under the terms and conditions specified, by their employing agency.

(a) A safety police officer of the County of Los Angeles, if the primary duty of the officer is the enforcement of the law in or about properties owned, operated, or administered by his or her employing agency or when performing necessary duties with respect to patrons, employees, and properties of his or her employing agency.

(b) A person designated by a local agency as a park ranger and regularly employed and paid in that capacity, if the primary duty of the officer is the protection of park and other property of the agency and the preservation of the peace therein.

(c) (1) A peace officer of the Department of General Services of the City of Los Angeles designated by the general manager of the department, if the primary duty of the officer is the enforcement of the law in or about properties owned, operated, or administered by his or her employing agency or when performing necessary duties with respect to patrons, employees, and properties of his or her employing agency.

(2) A peace officer designated pursuant to this subdivision, and authorized to carry firearms by his or her employing agency, shall satisfactorily complete the introductory course of firearm training required by Section 832 and shall requalify in the use of firearms every six months.

(3) Notwithstanding any other provision of law, a peace officer designated pursuant to this subdivision who is authorized to carry a firearm by his or her employing agency while on duty, shall not be authorized to carry a firearm when he or she is not on duty.

(d) A housing authority patrol officer employed by the housing authority of a city, district, county, or city and county or employed by the police department of a city and county, if the primary duty of the officer is the enforcement of the law in or about properties owned, operated, or administered by his or her employing agency or when performing necessary duties with respect to patrons, employees, and properties of his or her employing agency.

CHAPTER 447

An act to amend Sections 660 and 663 of the Welfare and Institutions Code, relating to youthful offenders.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 660 of the Welfare and Institutions Code is amended to read:

660. (a) Except as provided in subdivision (b), if the minor is detained, the clerk of the juvenile court shall cause the notice and copy of the petition to be served on all persons required to receive that notice and copy of the petition, either personally or by certified mail with request for return receipt, as soon as possible after filing of the petition and at least five days prior to the time set for hearing, unless the hearing is set less than five days from the filing of the petition, in which case, the notice and copy of the petition shall be served at least 24 hours prior to the time set for hearing.

(b) If the minor is detained, and all persons entitled to notice were present at the detention hearing, the clerk of the juvenile court shall cause the notice and copy of the petition to be served on all persons required to receive the notice and copy of the petition, either personally or by first-class mail, as soon as possible after the filing of the petition and at least five days prior to the time set for hearing, unless the hearing is set less than five days from the filing of the petition, in which case the notice and copy of the petition shall be served at least 24 hours prior to the time set for the hearing.

(c) If the minor is not detained, the clerk of the juvenile court shall cause the notice and copy of the petition to be served on all persons required to receive the notice and copy of the petition, either personally or by first-class mail, at least 10 days prior to the time set for hearing. If that person is known to reside outside of the county, the clerk of the juvenile court shall mail the notice and copy of the petition, by first-class mail, to that person, as soon as possible after the filing of the petition and at least 10 days before the time set for hearing. Failure to respond to the notice shall in no way result in arrest or detention. In the instance of failure to appear after notice by first-class mail, the court shall direct that the notice and copy of the petition is to be personally served on all persons required to receive the notice and a copy of the petition. However, if the whereabouts of the minor are unknown, upon a showing that all reasonable efforts to locate the minor have failed or that the minor has willfully evaded service of process, personal service of the notice and a copy of the petition is not required and a warrant for the arrest of the minor may be issued pursuant to Section 663. Personal service

of the notice and copy of the petition outside of the county at least 10 days before the time set for hearing is equivalent to service by first-class mail. Service may be waived by any person by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of the court at or prior to the hearing.

(d) For purposes of this section, service on the minor's attorney shall constitute service on the minor's parent or guardian.

SEC. 2. Section 663 of the Welfare and Institutions Code is amended to read:

663. (a) Whenever a petition has been filed in the juvenile court alleging that a minor comes within the provisions of Section 601 or 602 and praying for a hearing thereon, or whenever any subsequent petition has been filed praying for a hearing in the matter of the minor, a warrant of arrest may be issued immediately for the minor upon a showing that any one of the following conditions are satisfied:

(1) It appears to the court that the conduct and behavior of the minor may endanger the health, person, welfare, or property of himself or herself, or others, or that the circumstances of his or her home environment may endanger the health, person, welfare, or property of the minor.

(2) It appears to the court that either personal service upon the minor has been unsuccessful, or the whereabouts of the minor are unknown, and all reasonable efforts to locate and personally serve the minor have failed.

(3) It appears to the court that the minor has willfully evaded service of process.

(b) Nothing in this section shall be construed to limit the right of parents or guardians to receive the notice and a copy of the petition pursuant to Section 660.

CHAPTER 448

An act to amend Section 27203 of, and to add Section 27204 to, the Government Code, and to amend, repeal, and add Section 19.8 of the Penal Code, relating to county recorders.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 27203 of the Government Code is amended to read:

27203. Any recorder to whom an instrument proved or acknowledged according to law or any paper or notice which may by law be recorded is delivered for record is liable to the party aggrieved

for the amount of the damages occasioned thereby, if he or she commits any of the following acts:

(a) (1) Neglects or refuses to record the instrument, paper, or notice within a reasonable time after receiving it. This subdivision shall not apply to an instrument, paper, or notice that the recorder has determined to be an unrecordable document pursuant to this chapter. Nothing in this subdivision shall preclude the application of Section 27201.

(2) The recorder may provide, to any person presenting a document the recorder determines to be an unrecordable document, a form stating that the person has the right to judicial review in a court of competent jurisdiction of the recorder's refusal to record the document. The form shall include a section stating the recorder's reason for refusing the document. The form shall provide notice that it is a public offense to further attempt to record the document without an order of the court as provided by Section 27204. The recorder shall keep a correct copy of the refused document. In the event the document is determined by the court to be a recordable document, the recorder shall pay the filing fees for the review, and shall record the document within a reasonable time.

(b) Records any instrument, paper, or notice, willfully or negligently, untruly, or in any manner other than that prescribed by this chapter.

(c) Neglects or refuses to keep in his office or to make the proper entries in the indices required by this chapter.

(d) Alters, changes, obliterates or inserts any new matter in any records deposited in his office. The recorder may make marginal notations on the records in his office indicating the affixing of internal revenue stamps to documents subsequent to recordation or the affixing of such stamps to original deeds on file in the office of the registrar of titles.

SEC. 2. Section 27204 is added to the Government Code, to read:

27204. Any person who receives a form from the recorder pursuant to subdivision (a) of Section 27203, stating that the proffered document is unrecordable, and who subsequently attempts to record the document without an order from the court requiring recordation of that document, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine, or of an infraction punishable pursuant to Section 19.8 of the Penal Code.

SEC. 3. Section 19.8 of the Penal Code is amended to read:

19.8. The following offenses are subject to subdivision (d) of Section 17: Sections 193.8, 330, 415, 485, 555, and 853.7, of this code; subdivision (m) of Section 602 of this code; subdivision (b) of Section 25658 and Sections 21672, 25658.5, 25661, and 25662 of the Business and Professions Code; Section 27204 of the Government Code; subdivision (c) of Section 23109 and Sections 12500, 14601.1, 27150.1,

40508, and 42005 of the Vehicle Code, and any other offense which the Legislature makes subject to subdivision (d) of Section 17. Except where a lesser maximum fine is expressly provided for violation of any of those sections, any violation which is an infraction is punishable by a fine not exceeding two hundred fifty dollars ($250).

Except for the violations enumerated in subdivision (d) of Section 13202.5 of the Vehicle Code, and Section 14601.1 of the Vehicle Code based upon failure to appear, a conviction for any offense made an infraction under subdivision (d) of Section 17 is not grounds for the suspension, revocation, or denial of any license, or for the revocation of probation or parole of the person convicted.

SEC. 3.1. Section 19.8 of the Penal Code is amended to read:

19.8. The following offenses are subject to subdivision (d) of Section 17: Sections 193.8, 330, 415, 485, 555, 652, and 853.7, of this code; subdivision (m) of Section 602 of this code; subdivision (b) of Section 25658 and Sections 21672, 25658.5, 25661, and 25662 of the Business and Professions Code; Section 27204 of the Government Code; subdivision (c) of Section 23109 and Sections 12500, 14601.1, 27150.1, 40508, and 42005 of the Vehicle Code, and any other offense which the Legislature makes subject to subdivision (d) of Section 17. Except where a lesser maximum fine is expressly provided for violation of any of those sections, any violation which is an infraction is punishable by a fine not exceeding two hundred fifty dollars ($250).

Except for the violations enumerated in subdivision (d) of Section 13202.5 of the Vehicle Code, and Section 14601.1 of the Vehicle Code based upon failure to appear, a conviction for any offense made an infraction under subdivision (d) of Section 17 is not grounds for the suspension, revocation, or denial of any license, or for the revocation of probation or parole of the person convicted.

This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 3.2. Section 19.8 is added to the Penal Code, to read:

19.8. The following offenses are subject to subdivision (d) of Section 17: Sections 193.8, 330, 415, 485, 555, and 853.7, of this code; subdivision (m) of Section 602 of this code; subdivision (b) of Section 25658 and Sections 21672, 25658.5, 25661, and 25662 of the Business and Professions Code; Section 27204 of the Government Code; subdivision (c) of Section 23109 and Sections 12500, 14601.1, 27150.1, 40508, and 42005 of the Vehicle Code, and any other offense which the Legislature makes subject to subdivision (d) of Section 17. Except where a lesser maximum fine is expressly provided for violation of any of those sections, any violation which is an infraction is punishable by a fine not exceeding two hundred fifty dollars ($250).

Except for the violations enumerated in subdivision (d) of Section 13202.5 of the Vehicle Code, and Section 14601.1 of the Vehicle Code based upon failure to appear, a conviction for any offense made an infraction under subdivision (d) of Section 17 is not grounds for the

suspension, revocation, or denial of any license, or for the revocation of probation or parole of the person convicted.

This section shall become operative on January 1, 2005.

SEC. 4. Sections 3.1 and 3.2 of this bill incorporate amendments to Section 19.8 of the Penal Code proposed by both this bill and AB 99. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 19.8 of the Penal Code, and (3) this bill is enacted after AB 99, in which case Section 3 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 449

An act to amend Section 3151 of, and to add Section 3151.5 to, the Family Code, relating to family law.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 3151 of the Family Code is amended to read:

3151. (a) The child's counsel appointed under this chapter is charged with the representation of the child's best interests. The role of the child's counsel is to gather facts that bear on the best interests of the child, and present those facts to the court, including the child's wishes when counsel deems it appropriate for consideration by the court pursuant to Section 3042. The counsel's duties, unless under the circumstances it is inappropriate to exercise the duty, include interviewing the child, reviewing the court files and all accessible relevant records available to both parties, and making any further investigations as the counsel considers necessary to ascertain facts relevant to the custody or visitation hearings.

(b) At the court's request, counsel shall prepare a written statement of issues and contentions setting forth the facts that bear on the best interests of the child. The statement shall set forth a

summary of information received by counsel, a list of the sources of information, the results of the counsel's investigation, and such other matters as the court may direct. The statement of issues and contentions shall not contain any communication subject to Section 954 of the Evidence Code. The statement of issues and contentions shall be filed with the court and submitted to the parties or their attorneys of record at least 10 days before the hearing, unless the court orders otherwise. At the court's request, counsel may orally state the wishes of the child if that information is not a privileged communication subject to Section 954 of the Evidence Code, for consideration by the court pursuant to Section 3042. Counsel shall not be called as a witness in the proceeding. Counsel may introduce and examine counsel's own witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to represent the child adequately. In consultation with representatives of the Family Law Section of the State Bar and the Senate and Assembly Judiciary Committees, the Judicial Council may specify standards for the preparation of the statement of issues and contentions and may promulgate a model statement of issues and contentions, which shall include simple instructions regarding how to subpoena a witness, and a blank subpoena form.

(c) The child's counsel shall have the following rights:

(1) Reasonable access to the child.

(2) Standing to seek affirmative relief on behalf of the child.

(3) Notice of any proceeding, and all phases of that proceeding, including a request for examination affecting the child.

(4) The right to take any action that is available to a party to the proceeding, including, but not limited to, the following: filing pleadings, making evidentiary objections, and presenting evidence and being heard in the proceeding, which may include, but shall not be limited to, presenting motions and orders to show cause, and participating in settlement conferences, trials, seeking writs, appeals, and arbitrations.

(5) Access to the child's medical, dental, mental health, and other health care records, school and educational records, and the right to interview school personnel, caretakers, health care providers, mental health professionals, and others who have assessed the child or provided care to the child. The release of this information to counsel shall not constitute a waiver of the confidentiality of the reports, files, and any disclosed communications. Counsel may interview mediators; however, the provisions of Sections 3177 and 3182 shall apply.

(6) The right to reasonable advance notice of and the right to refuse any physical or psychological examination or evaluation, for purposes of the proceeding, which has not been ordered by the court.

(7) The right to assert or waive any privilege on behalf of the child.

(8) The right to seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding, upon approval by the court.

SEC. 2. Section 3151.5 is added to the Family Code, to read:

3151.5. If a child is represented by court appointed counsel, at every hearing in which the court makes a judicial determination regarding custody or visitation the court shall consider any statement of issues and contentions of the child's counsel. Any party may subpoena as a witness any person listed in the statement of issues and contentions as having provided information to the attorney, but the attorney shall not be called as a witness.

CHAPTER 450

An act to amend Sections 82015, 82028, and 82030 of the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 82015 of the Government Code is amended to read:

82015. (a) "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes.

(b) (1) A payment made at the behest of a committee as defined in subdivision (a) of Section 82013 is a contribution to the committee unless full and adequate consideration is received from the committee for making the payment.

(2) A payment made at the behest of a candidate is a contribution to the candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

(A) Full and adequate consideration is received from the candidate.

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars ($5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to the provisions of subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five thousand dollars ($5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.

(C) For purposes of subparagraph (B), a payment is made for purposes related to a candidate's candidacy for elective office if all or a portion of the payment is used for election-related activities. For purposes of this subparagraph, "election-related activities" shall include, but are not limited to, the following:

(i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(ii) Communications that contain reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for elective office.

(iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.

(iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clauses (i), (ii), or (iii), above.

(v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.

(vi) Preparing campaign budgets.

(vii) Preparing campaign finance disclosure statements.

(viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(D) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate.

(c) The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the candidate's own money or property used on behalf of his or her candidacy; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

(d) The term "contribution" further includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

(e) The term "contribution" does not include amounts received pursuant to an enforceable promise to the extent those amounts have been previously reported as a contribution. However, the fact that those amounts have been received shall be indicated in the appropriate campaign statement.

(f) The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars ($500) or less.

(g) Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his or her own travel expenses if the payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

SEC. 1.5. Section 82015 of the Government Code is amended to read:

82015. (a) "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

(b) (1) A payment made at the behest of a committee as defined in subdivision (a) of Section 82013 is a contribution to the committee

unless full and adequate consideration is received from the committee for making the payment.

(2) A payment made at the behest of a candidate is a contribution to the candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

(A) Full and adequate consideration is received from the candidate.

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars ($5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to the provisions of subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five thousand dollars ($5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.

(C) For purposes of subparagraph (B), a payment is made for purposes related to a candidate's candidacy for elective office if all or a portion of the payment is used for election-related activities. For purposes of this subparagraph, "election-related activities" shall include, but are not limited to, the following:

(i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(ii) Communications that contain reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for elective office.

(iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.

(iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clauses (i), (ii), or (iii), above.

(v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.

(vi) Preparing campaign budgets.

(vii) Preparing campaign finance disclosure statements.

(viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(D) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate.

(c) The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the candidate's own money or property used on behalf of his or her candidacy other than personal funds of the candidate used to pay either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

(d) The term "contribution" further includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

(e) The term "contribution" does not include amounts received pursuant to an enforceable promise to the extent those amounts have been previously reported as a contribution. However, the fact that those amounts have been received shall be indicated in the appropriate campaign statement.

(f) The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs

for the meeting or fundraising event are five hundred dollars ($500) or less.

(g) Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his or her own travel expenses if the payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

SEC. 2. Section 82028 of the Government Code is amended to read:

82028. (a) "Gift" means, except as provided in subdivision (b), any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(b) The term "gift" does not include:

(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material."

(2) Gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.

(3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

(4) Campaign contributions required to be reported under Chapter 4 of this title.

(5) Any devise or inheritance.

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars ($250).

SEC. 3. Section 82030 of the Government Code is amended to read:

82030. (a) "Income" means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid

by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. "Income," other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

(b) "Income" also does not include:

(1) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100).

(2) Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(3) Any devise or inheritance.

(4) Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.

(5) Dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission of the United States government or a commodity future registered with the Commodity Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures.

(6) Redemption of a mutual fund.

(7) Alimony or child support payments.

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status if:

(A) Used to purchase, refinance the purchase of, or for improvements to, the principal residence of filer; or

(B) The balance owed does not exceed ten thousand dollars ($10,000).

(9) Any loan from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan from any such person shall be considered income if the lender is acting as an agent or intermediary for any person not covered by this paragraph.

(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status, so long as the balance owed to the creditor does not exceed ten thousand dollars ($10,000).

(11) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

(12) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser.

SEC. 3.5. Section 82030 of the Government Code is amended to read:

82030. (a) "Income" means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. "Income," other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

(b) "Income" also does not include:

(1) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100).

(2) Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(3) Any devise or inheritance.

(4) Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.

(5) Dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission of the United States government or a commodity future registered with the Commodity Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures.

(6) Redemption of a mutual fund.

(7) Alimony or child support payments.

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status if:

(A) The loan is secured by the principal residence of filer; or

(B) The balance owed does not exceed ten thousand dollars ($10,000).

(9) Any loan from or payments received on a loan made to an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan or loan payment received from any such person shall be considered income if he or she is acting as an agent or intermediary for any person not covered by this paragraph.

(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status, so long as the balance owed to the creditor does not exceed ten thousand dollars ($10,000).

(11) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

(12) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 82015 of the Government Code proposed by both this bill and SB 363. It shall only become operative if (1) both bill are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 82015 of the Government Code, and (3) this bill is enacted after SB 363, in which case Section 1 of this bill shall not become effective.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 82030 of the Government Code proposed by both this bill and SB 946. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 82030 of the Government Code, and (3) this bill is enacted

after SB 946, in which case Section 3 of this bill shall not become effective.

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

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

SEC. 7. The Legislature finds and declares that the provisions of this act further the purpose of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

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 clarify the definition of the term "contribution" so that candidates for elective office may better comply with the contribution limitations imposed by the amendments to the Political Reform Act of 1974 in the form of the California Political Reform Act of 1996, and in order to clarify the definitions of "gift" and "income" so that public officials and candidates for elective office may avoid conflicts of interest under the Political Reform Act of 1974, it is necessary that this act take effect immediately.

CHAPTER 451

An act to amend Section 19556 of the Business and Professions Code, relating to horseracing.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 19556 of the Business and Professions Code is amended to read:

19556. (a) The distribution shall be made by the distributing agent to beneficiaries qualified under this article. For the purposes of this article, a beneficiary shall be all of the following:

(1) A nonprofit corporation or organization entitled by law to receive a distribution made by a distributing agent.

(2) Exempt or entitled to an exemption from the same taxes measured by income imposed by this state and the United States as those under which the distributing agent is exempt or entitled to an exemption.

(3) Engaged in charitable, benevolent, civic, religious, educational, or veterans' work similar to that of agencies recognized by an organized community chest in the State of California, except that the funds so distributed may be used by the beneficiary for capital expenditures.

(d) Approved by the board.

(b) At least 20 percent of the distribution shall be made to charities associated with the horseracing industry. No beneficiary otherwise qualified under this section to receive charity day net proceeds shall be excluded on the basis that the beneficiary provides charitable benefits to persons connected with the care, training, and running of racehorses, except that type of beneficiary shall make an accounting to the board within one calendar year of the date of receipt of any distribution.

CHAPTER 452

An act to amend Sections 7522, 7582.2, 7583.12, 7583.33, 7583.37, 7597.1, and 7597.6 of, to amend, repeal, and add Section 7583.22 of, and to repeal Section 7522.1 of, the Business and Professions Code, and to amend Sections 70 and 12033 of the Penal Code, relating to security services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 7522 of the Business and Professions Code, as amended by Section 2.1 of Chapter 1064 of the Statutes of 1996, is amended to read:

7522. This chapter does not apply to:

(a) A person employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of such employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal

knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) An attorney at law in performing his or her duties as an attorney at law.

(f) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(g) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(h) A person engaged solely in the business of securing information about persons or property from public records.

(i) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private investigator or contracts for his or her services as or is employed as an armed private investigator. For purposes of this subdivision, "armed private investigator" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(j) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(k) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(*l*) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

(m) The act of serving process by an individual who is registered as a process server pursuant to Section 22350.

SEC. 2. Section 7522.1 of the Business and Professions Code is repealed.

SEC. 3. Section 7582.2 of the Business and Professions Code, as amended by Section 3.1 of Chapter 1064 of the Statutes of 1996, is amended to read:

7582.2. This chapter does not apply to:

(a) A person employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt such peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, ''armed security officer'' means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(*l*) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of subdivision (a) of Section 12027 of the Penal Code or paragraph (1) of subdivision (b) of Section 12031 of the Penal Code or has met the requirements set forth in Section 12033 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

(p) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

SEC. 3.1. Section 7583.12 of the Business and Professions Code is amended to read:

7583.12. (a) No employee of a licensee shall carry or use a firearm unless the employee has in his or her possession both of the following:

(1) A valid guard registration card issued pursuant to this chapter.

(2) A valid firearm qualification card issued pursuant to this chapter.

(b) Paragraph (2) of subdivision (a) shall not apply to a duly appointed peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who meets all of the following:

(1) He or she has successfully completed a course of study in the use of firearms.

(2) He or she is authorized to carry a concealed firearm in the course and scope of his or her employment pursuant to subdivision (a) of Section 12027 of the Penal Code.

(3) He or she has proof that he or she has applied to the bureau for a firearms qualification card.

SEC. 3.2. Section 7583.22 of the Business and Professions Code is amended to read:

7583.22. (a) A licensee, qualified manager of a licensee, or security guard who in the course of his or her employment may be required to carry a firearm shall, prior to carrying a firearm, do both of the following:

(1) Complete a course of training in the carrying and use of firearms.

(2) Receive a firearms qualification card or be otherwise qualified to carry a firearm as provided in Section 7583.12.

(b) A licensee shall not permit an employee to carry or use a loaded or unloaded firearm, whether or not it is serviceable or operative, unless the employee possesses a valid and current firearms qualification card issued by the bureau or is otherwise qualified to carry a firearm as provided in Section 7583.12.

(c) Paragraph (1) of subdivision (a) shall not apply to a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who has successfully completed a course of study in the use of firearms.

(d) This section shall remain in effect only until January 1, 1998, and as of that date is repealed.

SEC. 3.3. Section 7583.22 is added to the Business and Professions Code, to read:

7583.22. (a) A licensee, qualified manager of a licensee, or security guard who, in the course of his or her employment, may be required to carry a firearm shall, prior to carrying a firearm, do both of the following:

(1) Complete a course of training in the carrying and use of firearms.

(2) Receive a firearms qualification card or be otherwise qualified to carry a firearm as provided in Section 7583.12.

(b) A licensee shall not permit an employee to carry or use a loaded or unloaded firearm, whether or not it is serviceable or operative, unless the employee possesses a valid and current firearms qualification card issued by the bureau or is so otherwise qualified to carry a firearm as provided in Section 7583.12.

(c) Paragraph (1) of subdivision (a) shall not apply to a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who has successfully completed a course of study in the use of firearms.

(d) This section shall become operative on January 1, 1998.

SEC. 3.4. Section 7583.22 is added to the Business and Professions Code, to read:

7583.22. (a) A licensee, qualified manager of a licensee, or security guard who, in the course of his or her employment, may be required to carry a firearm shall, prior to carrying a firearm, do both of the following:

(1) Complete a course of training in the carrying and use of firearms.

(2) Receive a firearms qualification card or be otherwise qualified to carry a firearm as provided in Section 7583.12.

(b) A licensee shall not permit an employee to carry or use a loaded or unloaded firearm, whether or not it is serviceable or operative, unless the employee possesses a valid and current firearms qualification card issued by the bureau or is so otherwise qualified to carry a firearm as provided in Section 7583.12.

(c) A pocket card issued by the bureau pursuant to Section 7582.13 may also serve as a firearms qualification card if so indicated on the face of the card.

(d) Paragraph (1) of subdivision (a) shall not apply to a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who has successfully completed a course of study in the use of firearms.

(e) This section shall become operative on January 1, 1998.

SEC. 4. Section 7583.33 of the Business and Professions Code is amended to read:

7583.33. (a) Any licensee, qualified manager, or a registered uniformed security guard who wishes to carry a baton in the performance of his or her duties, shall qualify to carry the weapon pursuant to Article 5 (commencing with Section 7585).

(b) Subdivision (a) does not apply to a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has successfully completed a course of study in the use of batons.

SEC. 5. Section 7583.37 of the Business and Professions Code is amended to read:

7583.37. The director may assess fines as enumerated in Article 7 (commencing with Section 7587). Assessment of administrative fines shall be independent of any other action by the bureau or any local,

state, or federal governmental agency that may result from a violation of this article. In addition to other prohibited acts under this chapter, no licensee, qualified manager, or registered security guard shall, during the course and scope of licensed activity, do any of the following:

(a) Carry any inoperable, replica, or other simulated firearm.

(b) Use a firearm in violation of the law, or in knowing violation of the standards for the carrying and usage of firearms as taught in the course of training in the carrying and use of firearms. Unlawful or prohibited uses of firearms shall include, but not be limited to, the following:

(1) Illegally using, carrying, or possessing a dangerous weapon.

(2) Brandishing a weapon.

(3) Drawing a weapon without proper cause.

(4) Provoking a shooting incident without cause.

(5) Carrying or using a firearm while on duty while under the influence of alcohol or dangerous drugs.

(6) Carrying or using a firearm of a caliber for which a firearms permit has not been issued by the bureau.

(c) Carry or use a baton in the performance of his or her duties, unless he or she has in his or her possession a valid baton certificate issued pursuant to Section 7585.14.

(d) Carry or use tear gas or any other nonlethal chemical agent in the performance of his or her duties unless he or she has in his or her possession proof of completion of a course in the carrying and use of tear gas or any other nonlethal chemical agent.

(e) Carry a concealed pistol, revolver, or other firearm capable of being concealed upon the person unless one of the following circumstances applies:

(1) The person has been issued a permit to carry a pistol, revolver, or other firearm capable of being concealed upon the person in a concealed manner by a local law enforcement agency pursuant to Section 12050 of the Penal Code.

(2) The person is employed as a guard or messenger of a common carrier, bank, or other financial institution and he or she carries the weapon while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state, as specified in subdivision (e) of Section 12027 of the Penal Code.

(3) The person is an honorably retired peace officer authorized to carry a concealed firearm pursuant to subdivision (a) or (i) of Section 12027 of the Penal Code.

(4) The person is a duly appointed peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who is authorized to carry a concealed firearm in the course and scope of his or her employment pursuant to subdivision (a) of Section 12027 of the Penal Code.

SEC. 5.1. Section 7597.1 of the Business and Professions Code is amended to read:

7597.1. (a) No licensee, qualified manager, branch office manager, or alarm agent shall carry, use, or possess a loaded or unloaded firearm in the course and scope of his or her employment, whether or not it is serviceable or operative, unless he or she has in his or her possession a valid and current firearms qualification card issued to him or her by the bureau. The card shall be shown to any peace officer or bureau representative upon demand.

(b) Subdivision (a) shall not apply to a duly appointed peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who meets all of the following:

(1) He or she has successfully completed a course of study in the use of firearms.

(2) He or she is authorized to carry a concealed firearm in the course and scope of his or her employment pursuant to subdivision (a) of Section 12027 of the Penal Code.

(3) He or she has proof that he or she has applied to the bureau for a firearms qualification card.

(c) A fine of twenty-five dollars ($25) may be assessed for the first violation of this section and a fine of one hundred dollars ($100) for each subsequent violation.

SEC. 6. Section 7597.6 of the Business and Professions Code is amended to read:

7597.6. (a) No licensee, qualified manager, branch office manager, or alarm agent shall carry a pistol, revolver, or other firearm capable of being concealed upon the person in a concealed manner unless one of the following circumstances apply:

(1) The person has been issued a permit to carry that firearm in a concealed manner by a local law enforcement agency pursuant to Section 12050 of the Penal Code.

(2) The person is an honorably retired peace officer authorized to carry a concealed firearm pursuant to subdivision (a) or (i) of Section 12027 of the Penal Code.

(3) The person is a duly appointed peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who is authorized to carry a concealed firearm in the course and scope of his or her employment pursuant to subdivision (a) of Section 12027 of the Penal Code.

(b) A fine of five hundred dollars ($500) may be assessed for each violation of subdivision (a).

SEC. 7. Section 70 of the Penal Code is amended to read:

70. (a) Every executive or ministerial officer, employee, or appointee of the State of California, or any county or city therein, or any political subdivision thereof, who knowingly asks, receives, or agrees to receive any emolument, gratuity, or reward, or any promise thereof excepting such as may be authorized by law for doing an official act, is guilty of a misdemeanor.

(b) This section does not prohibit deputy registrars of voters from receiving compensation when authorized by local ordinance from any candidate, political committee, or statewide political organization for securing the registration of voters.

(c) Nothing in this section precludes a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, from engaging in, or being employed in, casual or part-time employment as a private security guard or patrolman for a public entity while off duty from his or her principal employment and outside his or her regular employment as a peace officer of a state or local agency, and exercising the powers of a peace officer concurrently with that employment, provided that the peace officer is in a police uniform and is subject to reasonable rules and regulations of the agency for which he or she is a peace officer. Notwithstanding the above provisions, any and all civil and criminal liability arising out of the secondary employment of any peace officer pursuant to this subdivision shall be borne by the officer's secondary employer.

It is the intent of the Legislature by this subdivision to abrogate the holdings in People v. Corey, 21 Cal. 3d 738, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, by a public entity, while wearing a police uniform as private security guards or patrolmen, and to allow the exercise of peace officer powers concurrently with that employment.

(d) Nothing in this section precludes a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, from engaging in, or being employed in, casual or part-time employment as a private security guard or patrolman by a private employer while off duty from his or her principal employment and outside his or her regular employment as a peace officer, and exercising the powers of a peace officer concurrently with that employment, provided that all of the following are true:

(1) The peace officer is in his or her police uniform.

(2) The casual or part-time employment as a private security guard or patrolman is approved by the county board of supervisors with jurisdiction over the principal employer or by the board's designee or by the city council with jurisdiction over the principal employer or by the council's designee.

(3) The wearing of uniforms and equipment is approved by the principal employer.

(4) The peace officer is subject to reasonable rules and regulations of the agency for which he or she is a peace officer.

Notwithstanding the above provisions, a peace officer while off duty from his or her principal employment and outside his or her regular employment as a peace officer of a state or local agency shall not exercise the powers of a police officer if employed by a private employer as a security guard during a strike, lockout, picketing, or

other physical demonstration of a labor dispute at the site of the strike, lockout, picketing, or other physical demonstration of a labor dispute. The issue of whether or not casual or part-time employment as a private security guard or patrolman pursuant to this subdivision is to be approved shall not be a subject for collective bargaining. Any and all civil and criminal liability arising out of the secondary employment of any peace officer pursuant to this subdivision shall be borne by the officer's principal employer. The principal employer shall require the secondary employer to enter into an indemnity agreement as a condition of approving casual or part-time employment pursuant to this subdivision.

It is the intent of the Legislature by this subdivision to abrogate the holdings in People v. Corey, 21 Cal. 3d 738, and Cervantez v. J. C. Penney Co., 24 Cal. 3d 579, to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform approved by the principal employer, as private security guards or patrolmen, and to allow the exercise of peace officer powers concurrently with that employment.

SEC. 8. Section 12033 of the Penal Code is amended to read:

12033. The Department of Consumer Affairs may issue a certificate to any person referred to in subdivision (d) of Section 12031, upon notification by the school where the course was completed, that the person has successfully completed a course in the carrying and use of firearms and a course of training in the exercise of the powers of arrest which meet the standards prescribed by the department pursuant to Section 7583.5 of the Business and Professions Code.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To correct incorrect references in the Business and Professions Code and to clarify ambiguities that have resulted from the enactment of recent legislation relating to the interaction of Section 70 of the Penal Code and Chapter 11.5 (commencing with Section 7580) of the Business and Professions Code as soon as possible, it is necessary that this act take effect immediately.

SEC. 10. Section 3.4 of this bill shall only become operative if Senate Bill 780 is enacted and becomes effective on or before January 1, 1998, in which case Section 3.3 of this bill shall not become operative.

CHAPTER 453

An act to add Section 1522.06 to the Health and Safety Code, relating to community care facilities.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 1522.06 is added to the Health and Safety Code, to read:

1522.06. (a) Notwithstanding subdivision (k) of Section 1505, upon adoption of a resolution by the board of supervisors of a county, any county child welfare agency may secure from municipal, county or state law enforcement personnel a criminal record through the California Law Enforcement Telecommunications System or an automated mobile and fixed location fingerprint identification system for the purpose of assessing a relative agreeing to receive and care for a minor and any other adult person residing in the home of the relative before placing the minor in the relative's home. Law enforcement shall cooperate with requests for criminal records authorized by this section and shall provide the information to the requesting entity in a timely manner.

(b) Any law enforcement officer or person authorized by this section to receive the information who obtains the information in the record and knowingly provides the information to a person not authorized by law to receive the information is guilty of a misdemeanor as specified in Section 11142 of the Penal Code.

(c) Nothing in this section shall preclude the relative or other person living in the relative's home from refuting any of the information obtained by law enforcement if the individual believes the criminal record check revealed erroneous information.

(d) Use of the California Law Enforcement Telecommunications System authorized by subdivision (a) shall not be applicable after January 1, 2000, or after an automated mobile and fixed location fingerprint identification system is available and accessible to a child welfare agency, whichever comes first.

(e) For purposes of this section, "relative" means an adult who is related to the child by blood or affinity, including a half-sibling and those adults whose status is preceded by the words "step," "great," "great-great," or "grand" or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

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CHAPTER 454

An act to amend Section 23803 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 23803 of the Business and Professions Code is amended to read:

23803. The department, upon its own motion or upon the petition of a licensee or a transferee who has filed an application for the transfer of the license, if it is satisfied that the grounds which caused the imposition of the conditions no longer exist, shall order their removal or modification, provided written notice is given to the local governing body of the area in which the premises are located. The local governing body has 30 days to file written objections to the removal or modification of any condition. The department may not remove or modify any condition to which an objection has been filed without holding a hearing as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Any petition for the removal or modification of a condition pursuant to this section shall be accompanied by a fee of one hundred dollars ($100).

CHAPTER 455

An act to amend Sections 82030 87103, 87303, 89506, 91005, and 91011 of, and to add Section 87209 to, the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 82030 of the Government Code is amended to read:

82030. (a) "Income" means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses,

per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. "Income," other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

(b) "Income" also does not include:

(1) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100).

(2) Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic, or charitable organization.

(3) Any devise or inheritance.

(4) Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.

(5) Dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission of the United States government or a commodity future registered with the Commodity Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures.

(6) Redemption of a mutual fund.

(7) Alimony or child support payments.

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status if:

(A) The loan is secured by the principal residence of filer; or

(B) The balance owed does not exceed ten thousand dollars ($10,000).

(9) Any loan from or payments received on a loan made to an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan or loan payment received from any such person shall be considered income if he or she is acting as an agent or intermediary for any person not covered by this paragraph.

(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of

business on terms available to members of the public without regard to official status, so long as the balance owed to the creditor does not exceed ten thousand dollars ($10,000).

(11) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

(12) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser.

SEC. 1.5. Section 82030 of the Government Code is amended to read:

82030. (a) "Income" means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. "Income," other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

(b) "Income" also does not include:

(1) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100).

(2) Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(3) Any devise or inheritance.

(4) Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.

(5) Dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission of the United States government or a commodity future registered with the

Commodity Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures.

(6) Redemption of a mutual fund.

(7) Alimony or child support payments.

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status if:

(A) The loan is secured by the principal residence of filer; or

(B) The balance owed does not exceed ten thousand dollars ($10,000).

(9) Any loan from or payments received on a loan made to an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan or loan payment received from any such person shall be considered income if he or she is acting as an agent or intermediary for any person not covered by this paragraph.

(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status, so long as the balance owed to the creditor does not exceed ten thousand dollars ($10,000).

(11) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

(12) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser.

SEC. 2. Section 87103 of the Government Code is amended to read:

87103. A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars ($1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars ($1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars ($250) or more in value

provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars ($250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

SEC. 3. Section 87209 is added to the Government Code, to read:

87209. When a statement is required to be filed under this article, every person specified in Section 87200 shall disclose any business positions held by that person. For purposes of this section, "business position" means any business entity in which the filer is a director, officer, partner, trustee, employee, or holds any position of management, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction or has done business in the jurisdiction at any time during the two years prior to the date the statement is required to be filed.

SEC. 4. Section 87303 of the Government Code is amended to read:

87303. No conflict of interest code shall be effective until it has been approved by the code reviewing body. Each agency shall submit a proposed conflict of interest code to the code reviewing body by the deadline established for the agency by the code reviewing body. The deadline for a new agency shall be not later than six months after it comes into existence. Within 90 days after receiving the proposed code or receiving any proposed amendments or revisions, the code reviewing body shall do one of the following:

(a) Approve the proposed code as submitted.

(b) Revise the proposed code and approve it as revised.

(c) Return the proposed code to the agency for revision and resubmission within 60 days. The code reviewing body shall either approve the revised code or revise it and approve it. When a proposed conflict of interest code or amendment is approved by the code reviewing body, it shall be deemed adopted and shall be promulgated by the agency.

SEC. 5. Section 89506 of the Government Code is amended to read:

89506. (a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) Gifts of travel not described in subdivision (a) are subject to the limits in Section 89503.

(c) Subdivision (a) applies only to travel that is reported on the recipient's statement of economic interests.

(d) For purposes of this section, a gift of travel does not include any of the following:

(1) Travel that is paid for from campaign funds, as permitted by Article 4 (commencing with Section 89510), or that is a contribution.

(2) Travel that is provided by the agency of a local elected officeholder, an elected state officer, member of a state board or commission, an individual specified in Section 87200, or a designated employee.

(3) Travel that is reasonably necessary in connection with a bona fide business, trade, or profession and that satisfies the criteria for federal income tax deduction for business expenses in Sections 162 and 274 of the Internal Revenue Code, unless the sole or predominant activity of the business, trade, or profession is making speeches.

(4) Travel that is excluded from the definition of a gift by any other provision of this title.

(e) This section does not apply to payments, advances, or reimbursements for travel and related lodging and subsistence permitted or limited by Section 170.9 of the Code of Civil Procedure.

SEC. 6. Section 91005 of the Government Code is amended to read:

91005. (a) Any person who makes or receives a contribution, gift or expenditure in violation of Section 84300, 84304, 86203, or 86204 is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to five hundred dollars ($500) or three times the amount of the unlawful contribution, gift or expenditure, whichever is greater.

(b) Any designated employee or public official specified in Section 87200, other than an elected state officer, who realizes an economic benefit as a result of a violation of Section 87100 or of a disqualification provision of a conflict of interest code is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.

SEC. 7. Section 91011 of the Government Code is amended to read:

91011. (a) No civil action alleging a violation in connection with a report or statement required by Chapter 4 (commencing with Section 84100) of this title shall be filed more than four years after an audit could begin as set forth in subdivision (c) of Section 90002.

(b) No civil action alleging a violation of any provisions of this title, other than those described in subdivision (a), shall be filed more than four years after the date the violation occurred.

SEC. 8. Section 1.5 of this bill incorporates amendments to Section 82030 of the Government Code proposed by both this bill and SB 124. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 82030 of the Government Code, and (3) this bill is enacted after SB 124, in which case Section 1 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the 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. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within

the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to promote a more complete disclosure of financial interests by elected officials, members of specified boards and commissions, and other specified high-ranking public officials designated under the Political Reform Act of 1974, to ensure the timely development and submission of conflict-of-interest codes by newly created state agencies, and to make important clarifying technical changes to Section 89506 of the Government Code, it is necessary that this act take effect immediately.

CHAPTER 456

An act to amend Section 18108 of, to add Sections 2159.5 and 18108.5 to, and to repeal and add Section 2159 of, the Elections Code, relating to elections.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 2159 of the Elections Code is repealed.

SEC. 2. Section 2159 is added to the Elections Code, to read:

2159. Notwithstanding paragraph (1) of subdivision (b) of Section 2158, any person who, in exchange for money or other valuable consideration, assists another to register to vote by receiving the completed affidavit of registration from the elector, shall sign in his or her handwriting and affix directly on the affidavit of registration his or her full name, telephone number, and address, and the name and telephone number of the person, company, or organization, if any, that agrees to pay money or other valuable consideration for the completed affidavit of registration. Failure to comply with this section shall not cause the invalidation of the registration of the voter.

SEC. 3. Section 2159.5 is added to the Elections Code, to read:

2159.5. Any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration, shall do all of the following:

(a) Maintain a list of the names, addresses, and telephone numbers of all individuals that the person, company, or other organization has agreed to compensate for assisting others to register to vote, and shall provide to each person receiving that consideration a written statement of that person's personal responsibilities and liabilities under Sections 2138, 2139, 2150, 2158, 2159, 18100, 18101,

18103, 18106, 18108, and 18108.5. Receipt of the written statement shall be acknowledged, in writing, by the person receiving the consideration, and the acknowledgment shall be kept by the person, company, or organization that agrees to compensate that person. All records required by this subdivision shall be maintained for a minimum of three years, and shall be made available to the elections official, the Secretary of State, or an appropriate prosecuting agency, upon demand. As an alternate to maintaining the records required by this subdivision, the records may be filed with the county elections official, who shall retain those records for a minimum of three years. The county elections official may charge a fee, not to exceed actual costs, for storing records pursuant to this subdivision.

(b) Not render any payment or promised consideration unless the information specified in Section 2159 has been affixed personally on the affidavit in the handwriting of the person with whom the agreement for payment was made.

(c) At the time of submission of affidavits to elections officials, identify and separate those affidavits into groups that do and that do not comply with the requirements of Sections 2150 and 2159. A signed acknowledgment shall be attached to each group of affidavits identifying a group as in compliance with Sections 2150 and 2159, and a group as not in compliance with either Section 2150 or 2159, or both.

(d) Failure to comply with this section shall not cause the invalidation of the registration of the voter.

SEC. 4. Section 18108 of the Elections Code is amended to read:

18108. (a) Except as provided in subdivision (c), any person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, and fails to comply with Section 2159, is guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months or when the failure to comply is found to be willful, not exceeding one year, or both.

(b) Any person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, upon a third or subsequent conviction, on charges brought and separately tried, for failure to comply with Section 2159 shall be punished by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the county jail not to exceed one year, or both.

(c) This section shall not apply to any public agency or its employees that is designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), when an elector asks for assistance to register to vote during the course and scope of the agency's normal business.

SEC. 5. Section 18108.5 is added to the Elections Code, to read:

18108.5. (a) Any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a

per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration who fails to comply with Section 2159.5, is guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months or when the failure to comply is found to be willful, not exceeding one year, or both.

(b) Any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration, upon a third or subsequent conviction, on charges brought and separately tried, for failure to comply with Section 2159.5 shall be punished by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the county jail not to exceed one year, or both.

(c) An elections official shall notify any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration, that three or more affidavits of registration submitted by a person who assisted another to register to vote do not comply with Sections 18100, 18101, 18103, or 18106. The elections official may forward a copy of each of the noncomplying affidavits of registration to the district attorney, who may make a determination whether probable cause exists to believe that a violation of law has occurred.

(d) This section shall not apply to any public agency or its employees that is designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), when an elector asks for assistance to register to vote during the course and scope of the agency's normal business.

SEC. 6. 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 457

An act to amend Section 19596 of the Business and Professions Code, relating to horseracing, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately as an urgency statute.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 19596 of the Business and Professions Code is amended to read:

19596. (a) Notwithstanding any other provision of law, the board may do any of the following:

(1) Authorize an association conducting a racing meeting in this state to accept wagers on the results of out-of-state feature races having a gross purse of at least fifty thousand dollars ($50,000) during the period the association is conducting the racing meeting on days when live races are being run.

(2) Authorize an association in this state to accept wagers on any stakes race conducted by the racing association that conducts the Kentucky Derby, the Preakness Stakes, or the Belmont Stakes, if the stakes race is conducted on the same day as the Kentucky Derby, the Preakness Stakes, or the Belmont Stakes, and if the association in this state that accepts those wagers is then conducting a live racing meeting.

(3) Authorize a harness racing association in this state to accept wagers on races conducted by the racing association that conducts the Breeder's Crown Stakes, if the race is conducted on the same day as the Breeder's Crown Stakes and if the association in this state that accepts those wagers is then conducting a live racing meeting.

(4) Authorize a licensed quarter horse racing association that is conducting a live racing meeting in this state to accept wagers on races conducted by the racing association that conducts the American Quarter Horse Racing Challenge, if the races are conducted on the same day as the American Quarter Horse Racing Challenge.

(5) Authorize the inclusion of wagers authorized pursuant to this section in the parimutuel pools of the out-of-state association that conducts the races on which the wagers are placed.

(b) The board authorization may be granted under this section only if both of the following conditions are met:

(1) The authorization complies with federal laws, including, but not limited to, Chapter 57 (commencing with Section 3001) of Title 15 of the United States Code.

(2) Wagering is offered only within the racing enclosure and only within seven days of the running of the out-of-state feature race.

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

In order to authorize racing associations to accept wagers on races pursuant to this act as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 458

An act to amend Sections 20903.5 and 31641.05 of the Government Code, relating to public employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 20903.5 of the Government Code is amended to read:

20903.5. (a) Notwithstanding Section 20903 or any other provision of this part, for only the 1994–95, 1995–96, 1996–97, 1997–98, and 1998–99 fiscal years, when the governing body of a contracting agency, other than a school employer, determines that because of an impending curtailment of service, or change in the manner of performing service, the best interests of the agency would be served by encouraging the retirement of local members, the governing body may adopt a resolution to grant eligible employees additional service credit if the following conditions exist:

(1) The member meets the age and service requirements of Section 21060, is credited with 10 or more years of service, and retires on service retirement on or before a date determined by the governing body that is within a period that is not more than 120 days after the governing body's adoption of the resolution.

(2) The governing body agrees to transmit to the retirement fund an amount determined by the board that is equal to the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount the member would have received without that service credit

and any administrative costs incurred by this system in a manner and time period acceptable to the governing body and the board. However, the payment period shall not exceed five years. If payment in full is not received within 30 days of the invoice, regular interest shall be charged on any unpaid balance.

(b) (1) The resolution shall specify the categories of employees that are eligible to receive the additional service credit and the departments, programs and position classifications in which employee members would be eligible for the additional service credit.

(2) The resolution shall specify the period of eligibility, and the amount of additional service in whole years. The amount of additional service credit shall not be more than four years and shall not be combined with any additional service credit granted under Section 20903.

(c) (1) The governing body shall certify either that sufficient positions have been deleted whose total cost equals or exceeds the lump-sum actuarial cost of the additional service credit granted or that all positions vacated due to the additional service credit granted pursuant to this section shall remain vacant for at least five years and until the lump-sum actuarial cost of the additional service credit granted has been recaptured from position vacancy salary savings.

(2) The governing body shall certify to the board the extent to which savings will exceed necessary payments to the board, the specific measures to be taken to assure that outcome, and that the agency has complied with Section 7507. The board may require the governing body to provide verification of its certification through independent review.

(d) At the time the governing body has achieved savings that are more than adequate to meet necessary payments to the board, or five years after commencement of the retirement period specified in paragraph (1) of subdivision (a), whichever occurs first, the governing body shall certify to the board the amount of actual savings and the measures taken to achieve the savings. The governing body shall maintain records for each worker retiring pursuant to this section. The board may require the governing body to provide verification of its certification through independent review. The board shall report these certifications to the Controller, who shall summarize the cost and savings information therein for inclusion in his or her annual report prepared pursuant to Sections 7501 through 7504. The Controller shall perform a postaudit to verify that the savings equal or exceed the lump-sum actuarial cost of the additional service granted pursuant to this section. The local contracting agency shall pay the cost of the postaudit.

(e) This section shall not be applicable to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending two years beyond the date of issuance

of the governing body's determination or if the member is not eligible to retire without the additional credit available under this section.

(f) Any member who qualifies under this section, upon subsequent reentry into this system or upon any subsequent service under contract or any other basis, shall forfeit the service credit acquired under this section. Any member who qualifies under this section shall not receive temporary reemployment as an annuitant with the public agency from which he or she has received credit under this section for five years following the date of retirement.

(g) No additional service credit shall be granted pursuant to this section on or after July 1, 1999.

SEC. 2. Section 31641.05 of the Government Code is amended to read:

31641.05. (a) Notwithstanding Section 31641.04 or any other provision of this part, for only the 1994–95, 1995–96, 1996–97, 1997–98, and 1998–99 fiscal years, when the board of supervisors, by resolution, determines that because of an impending curtailment of service or change in the manner of performing service, savings of money, or other economic benefit resulting to the county, the best interests of the county would be served, a member shall be eligible to receive additional service credit if all of the following conditions exist:

(1) The member is employed in a job classification, county department, or other county organizational unit included in the resolution adopted by the board of supervisors.

(2) The member is credited with 10 or more years of service and retires on or between dates specified by the board of supervisors in its resolution. In no event shall the specified period exceed 120 days.

(3) The county transmits to the retirement fund an amount determined by the board of retirement that is equal to the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount he or she would have received without that service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the county and the board of retirement. However, the payment period shall not exceed five years.

(b) The amount of service credit shall be the amount that the board of supervisors determines, but shall not be more than four years regardless of credited service and shall not exceed the number of years intervening between the date of the member's retirement and the date the member would be required to be retired because of age and shall not be combined with any additional service credit granted under Section 31641.04.

(c) The resolution described in subdivision (a) shall either identify sufficient deleted positions whose total cost equals or exceed the lump-sum actuarial cost of the additional service credit granted or proclaim that all positions vacated due to the additional service credit granted pursuant to this section shall remain vacant for at least

five years and until the lump-sum actuarial cost of the additional service credit granted has been recaptured from position vacancy salary savings.

(d) The board of supervisors shall certify to the board of retirement the extent to which savings will exceed necessary payments to the board of retirement, and the specific measures to be taken to assure that outcome. The board of retirement may require the board of supervisors to provide verification of its certification through independent review.

(e) At the time the county has achieved savings that are more than adequate to meet necessary payments to the board of retirement, or five years after commencement of the retirement period specified in paragraph (2) of this section, whichever occurs first, the board of supervisors shall certify to the retirement board the amount of actual savings and the measures taken to achieve the savings. The board of supervisors shall maintain records for each worker retiring pursuant to this section. The board of retirement may require the board of supervisors to provide verification of its certification through independent review. The board of supervisors shall report these certifications to the Controller, who should summarize the cost and savings information therein in his or her annual report prepared pursuant to Sections 7501 through 7504. The Controller shall perform a postaudit to verify that the savings equal or exceed the lump-sum actuarial cost of the additional service credit granted pursuant to this section. The county shall pay the cost of the postaudit.

(f) A county that elects to make the payment prescribed by subdivision (a) shall make the payment with respect to all eligible employees who retire during the period specified by the board of supervisors.

(g) This section shall not be applicable to any member otherwise eligible if the member receives any unemployment insurance payments during the period six months prior to the period specified pursuant to subdivision (a). This section shall not be applicable to any member if the member is not eligible to retire without the additional credit available under this section.

(h) This section shall not be applicable in any county until it is adopted by ordinance of the board of supervisors. Any county may adopt or readopt this section from time to time as conditions warrant.

(i) Any member who qualifies under this section upon subsequent reentry to county employment shall forfeit the service credit acquired under this section, unless the reentry is a result of a temporary callback pursuant to Section 31680.2, 31680.3, or 31680.6. Any member who receives credit under this section shall not be temporarily employed as an annuitant pursuant to Section 31680.2, 31680.3, or 31680.6 for five years following the date of retirement.

(j) The board of supervisors shall certify to the retirement board that the county has complied with Section 7507.

(k) This section shall not be subject to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

(*l*) No additional service credit shall be granted pursuant to this section on or after July 1, 1999.

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

In order to enable local government to respond to service curtailments by encouraging employee retirements, this act must take effect immediately.

CHAPTER 459

An act to amend Section 12025 of the Penal Code, relating to firearms.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 12025 of the Penal Code is amended to read:

12025. (a) A person is guilty of carrying a concealed firearm when he or she does any of the following:

(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Carrying a concealed firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) Where the person is not in lawful possession of the firearm, as defined in this section, or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section

12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) In all cases other than those specified in paragraphs (1) to (5), inclusive, as a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) (1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 12001.6 shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by this chapter, if probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(d) The court shall apply the three-month minimum sentence as specified in subdivision (c), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (c) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (c), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(e) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(f) For purposes of this section, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either owns the firearm or has the permission of the owner or a person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the owner or without the permission of a person who has custody of the firearm does not have lawful possession of the firearm.

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 460

An act to amend Sections 12035 and 12071 of, and to add Section 12036 to, the Penal Code, relating to firearms.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 12035 of the Penal Code is amended to read:

12035. (a) As used in this section, the following definitions shall apply:

(1) "Locking device" means a device that is designed to prevent the firearm from functioning and when applied to the firearm, renders the firearm inoperable.

(2) "Loaded firearm" has the same meaning as set forth in subdivision (g) of Section 12031.

(3) "Child" means a person under 16 years of age.

(4) "Great bodily injury" has the same meaning as set forth in Section 12022.7.

(5) "Locked container" has the same meaning as set forth in subdivision (d) of Section 12026.2.

(b) (1) Except as provided in subdivision (c), a person commits the crime of "criminal storage of a firearm of the first degree" if he or she keeps any loaded firearm within any premise which is under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian and the child obtains access to the firearm and thereby causes death or great bodily injury to himself, herself, or any other person.

(2) Except as provided in subdivision (c), a person commits the crime of "criminal storage of a firearm of the second degree" if he or she keeps any loaded firearm within any premise which is under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian and the child obtains access to the firearm and thereby causes injury, other than

great bodily injury, to himself, herself, or any other person, or carries the firearm either to a public place or in violation of Section 417.

(c) Subdivision (b) shall not apply whenever any of the following occurs:

(1) The child obtains the firearm as a result of an illegal entry to any premises by any person.

(2) The firearm is kept in a locked container or in a location that a reasonable person would believe to be secure.

(3) The firearm is carried on the person or within such a close proximity thereto so that the individual can readily retrieve and use the firearm as if carried on the person.

(4) The firearm is locked with a locking device that has rendered the firearm inoperable.

(5) The person is a peace officer or a member of the armed forces or national guard and the child obtains the firearm during, or incidental to, the performance of the person's duties.

(6) The child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person, or persons.

(7) The person who keeps a loaded firearm on any premise which is under his or her custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premise.

(d) Criminal storage of a firearm is punishable as follows:

(1) Criminal storage of a firearm in the first degree, by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Criminal storage of a firearm in the second degree, by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, the district attorney shall consider, among other factors, the impact of the injury or death on the person alleged to have violated this section when deciding whether to prosecute an alleged violation. It is the Legislature's intent that a parent or guardian of a child who is injured or who dies as the result of an accidental shooting shall be prosecuted only in those instances in which the parent or guardian behaved in a grossly negligent manner or where similarly egregious circumstances exist. This subdivision shall not otherwise restrict, in any manner, the factors that a district attorney may consider when deciding whether to prosecute alleged violations of this section.

(f) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an

accidental shooting, no arrest of the person for the alleged violation of this section shall occur until at least seven days after the date upon which the accidental shooting occurred.

In addition to the limitation contained in this subdivision, a law enforcement officer shall consider the health status of a child who suffers great bodily injury as the result of an accidental shooting prior to arresting a person for a violation of this section, if the person to be arrested is the parent or guardian of the injured child. The intent of this subdivision is to encourage law enforcement officials to delay the arrest of a parent or guardian of a seriously injured child while the child remains on life-support equipment or is in a similarly critical medical condition.

(g) (1) The fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section shall be considered a mitigating factor by a district attorney when he or she is deciding whether to prosecute the alleged violation.

(2) In any action or trial commenced under this section, the fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section, shall be admissible.

(h) Every person licensed under Section 12071 shall post within the licensed premises the notice required by paragraph (7) of subdivision (b) of that section, disclosing the duty imposed by this section upon any person who keeps a loaded firearm.

SEC. 2. Section 12036 is added to the Penal Code, to read:

12036. (a) As used in this section, the following definitions shall apply:

(1) "Locking device" means a device that is designed to prevent the firearm from functioning and when applied to the firearm, renders the firearm inoperable.

(2) "Child" means a person under the age of 16 years.

(3) "Off-premises" means premises other than the premises where the firearm was stored.

(4) "Locked container" has the same meaning as set forth in subdivision (d) of Section 12026.2.

(b) A person who keeps a pistol, revolver, or other firearm capable of being concealed upon the person, loaded or unloaded, within any premise that is under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to that firearm without the permission of the child's parent or legal guardian and the child obtains access to that firearm and thereafter carries that firearm off-premises, shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) A pistol, revolver, or other firearm capable of being concealed upon the person that a child gains access to and carries off-premises

in violation of this section shall be deemed "used in the commission of any misdemeanor as provided in this code or any felony" for the purpose of subdivision (b) of Section 12028 regarding the authority to confiscate firearms and other deadly weapons as a nuisance.

(d) This section shall not apply if any one of the following circumstances exists:

(1) The child obtains the pistol, revolver, or other firearm capable of being concealed upon the person as a result of an illegal entry into any premises by any person.

(2) The pistol, revolver, or other firearm capable of being concealed upon the person is kept in a locked container or in a location that a reasonable person would believe to be secure.

(3) The pistol, revolver, or other firearm capable of being concealed upon the person is locked with a locking device that has rendered the firearm inoperable.

(4) The pistol, revolver, or other firearm capable of being concealed upon a person is carried on the person within such a close range that the individual can readily retrieve and use the firearm as if carried on the person.

(5) The person is a peace officer or a member of the armed forces or national guard and the child obtains the pistol, revolver, or other firearm capable of being concealed upon the person during, or incidental to, the performance of the person's duties.

(6) The child obtains, or obtains and discharges, the pistol, revolver, or other firearm capable of being concealed upon the person in a lawful act of self-defense or defense of another person or persons.

(7) The person who keeps a pistol, revolver, or other firearm capable of being concealed upon the person has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises.

(e) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, the district attorney shall consider, among other factors, the impact of the injury or death on the person alleged to have violated this section when deciding whether to prosecute the alleged violation. It is the Legislature's intent that a parent or guardian of a child who is injured or who dies as the result of an accidental shooting shall be prosecuted only in those instances in which the parent or guardian behaved in a grossly negligent manner or where similarly egregious circumstances exist. This subdivision shall not otherwise restrict, in any manner, the factors that a district attorney may consider when deciding whether to prosecute alleged violations of this section.

(f) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, no arrest of the person for the alleged violation

of this section shall occur until at least seven days after the date upon which the accidental shooting occurred.

In addition to the limitation contained in this subdivision, a law enforcement officer shall consider the health status of a child who suffers great bodily injury as the result of an accidental shooting prior to arresting a person for a violation of this section, if the person to be arrested is the parent or guardian of the injured child. The intent of this subdivision is to encourage law enforcement officials to delay the arrest of a parent or guardian of a seriously injured child while the child remains on life-support equipment or is in a similarly critical medical condition.

(g) (1) The fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section shall be considered a mitigating factor by a district attorney when he or she is deciding whether to prosecute the alleged violation.

(2) In any action or trial commenced under this section, the fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section, shall be admissible.

(h) Every person licensed under Section 12071 shall post within the licensed premises the notice required by paragraph (7) of subdivision (b) of that section, disclosing the duty imposed by this section upon any person who keeps a pistol, revolver, or other firearm capable of being concealed upon the person.

SEC. 3. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's

permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

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

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

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

(3) No firearm shall be delivered:

(A) Prior to April 1, 1997, within 15 days of the application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 15 days of the submission to the department of any correction to the application, or within 15 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. Prior to April 1, 1997, within 10 days of the application to purchase any firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. On or after April 1, 1997, within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

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

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

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

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

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

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(B) "IF YOU KEEP A LOADED FIREARM, OR A FIREARM CONCEALABLE UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 16 GAINS ACCESS TO THE FIREARM, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(C) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the

acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearms safety certificate" means a basic firearms certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections

conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 3.5. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

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

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms

capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

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

(3) No firearm shall be delivered:

(A) Prior to April 1, 1997, within 15 days of the application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 15 days of the submission to the department of any correction to the application, or within 15 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. Prior to April 1, 1997, within 10 days of the application to purchase any firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. On or after April 1, 1997, within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

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

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

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

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

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

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(B) "IF YOU KEEP A LOADED FIREARM, OR A FIREARM CONCEALABLE UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 16 GAINS ACCESS TO THE FIREARM, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(C) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(9) (A) Commencing July 1, 1998, the licensee shall provide the purchaser or transferee of a firearm, or person being loaned a firearm, a trigger lock or similar device designed for that firearm. The trigger lock or similar device shall be designed to prevent the unintentional discharge of the firearm. The provisions of this subparagraph shall not apply to any purchaser, transferee, or other person being loaned a relic, curio, memorabilia, or display firearm.

(B) The licensee shall provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 which shall contain, among other things, a statement of the penalties for improper storage of a firearm and statistics for firearms used in suicides and accidental shootings in this state. The licensee may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the

acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearms safety certificate" means a basic firearms safety certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections

conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 1124. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 12071 of the Penal Code, and (3) this bill is enacted after AB 1124, in which case Section 3 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 461

An act to amend Sections 7072, 7084, and 7085 of, to add Sections 7072.5, 7085.5, and 15316 to, and to add and repeal Section 25536.3 of, the Government Code, relating to economic development.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 7072 of the Government Code, as added by Chapter 955 of the Statutes of 1996, is amended to read:

7072. For purposes of this chapter, the following definitions shall apply:

(a) "Agency" means the Trade and Commerce Agency.

(b) "Date of original designation" means the earlier of the following:

(1) The date the eligible area receives designation as an enterprise zone by the agency pursuant to this chapter.

(2) In the case of an enterprise zone deemed designated pursuant to subdivision (e) of Section 7073, the date the enterprise zone or program area received original designation by the agency pursuant to Chapter 12.8 (commencing with Section 7070) or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

(c) "Eligible area" means either of the following:

(1) An area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070), as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080), as it read prior to January 1, 1997.

(2) A geographic area that, based upon the determination of the agency, fulfills at least one of the following:

(A) The proposed geographic area meets the Urban Development Action Grant criteria of the United States Department of Housing and Urban Development.

(B) The area within the proposed zone has experienced plant closures within the past two years affecting more than 100 workers.

(C) The city or county has submitted material to the agency for a finding that the proposed geographic area meets criteria of economic distress related to those used in determining eligibility under the Urban Development Action Grant Program and is therefore an eligible area.

(D) The area within the proposed zone has a history of gang-related activity, whether or not crimes of violence have been committed.

(d) "Enterprise zone" means any area within a city, county, or city and county that is designated as such by the agency in accordance with the provisions of Section 7073.

(e) "Governing body" means a county board of supervisors or a city council, as appropriate.

(f) "High technology industries" include, but are not limited to, the computer, biological engineering, electronics, and telecommunications industries.

(g) "Resident," unless otherwise defined, means a person whose principal place of residence is within a targeted employment area.

(h) "Targeted employment area" means an area within a city, county, or city and county that is composed solely of those census tracts designated by the United States Department of Housing and Urban Development as having at least 51 percent of its residents of low- or moderate-income levels, using either the most recent United States Department of Census data available at the time of the original enterprise zone application or the most recent census data available at the time the targeted employment area is designated to determine that eligibility. The purpose of a "targeted employment area" is to encourage businesses in an enterprise zone to hire eligible residents of certain geographic areas within a city, county, or city and county. A targeted employment area may be, but is not required to be, the same as all or part of an enterprise zone. A targeted employment area's boundaries need not be contiguous. A targeted employment area does not need to encompass each eligible census tract within a city, county, or city and county. The governing body of each city, county or city and county that has jurisdiction of the enterprise zone shall identify those census tracts whose residents are in the most need of this employment targeting. Only those census tracts within the jurisdiction of the city, county, or city and county that has jurisdiction of the enterprise zone may be included in a targeted employment area.

At least a part of each eligible census tract within a targeted employment area shall be within the territorial jurisdiction of the city, county, or city and county that has jurisdiction for an enterprise zone. If an eligible census tract encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the designation of a targeted employment area. However, any one or more of those entities, by resolution or ordinance, may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application that apply to its jurisdiction, if the area is designated.

Each local governmental entity of each city, county, or city and county that has jurisdiction of an enterprise zone shall approve, by resolution or ordinance, the boundaries of its targeted employment area, regardless of whether a census tract within the proposed targeted employment area is outside the jurisdiction of the local governmental entity.

SEC. 2. Section 7072.5 is added to the Government Code, to read:

7072.5. By April 1, 1998, a governing body that has already designated a target employment area may request, by a resolution of all cities or counties having jurisdiction over the enterprise zone, to redesignate the targeted employment area using more current census data. A targeted employment area shall be comprised of census tracts from only one decennial census.

SEC. 3. Section 7084 of the Government Code is amended to read:

7084. (a) Whenever the state prepares an invitation for bid for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies that certify under penalty of perjury that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies that certify under penalty of perjury that not less than 90 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 5 to 9 percent of its work force during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 10 to 14 percent of its work force during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 15 to 19 percent of its work force during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 20 or more percent of its work force during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference cost under this section exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other provision of law exceed one hundred thousand dollars ($100,000). In those cases where the 15-percent cumulated preference cost would exceed the one hundred thousand dollar ($100,000) maximum preference cost limit, the one hundred thousand dollar ($100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this

section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a) or (b) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.

(2) Prior to the imposition of any sanction under this subdivision, the business shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(h) In each instance in this section an enterprise zone shall also mean any enterprise zone or program area previously authorized under any other provision of state law.

(i) As used in this section, "enterprise zone eligible employees" means employees who meet any of the requirements of clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.74, or clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 23622.5 of the Revenue and Taxation Code.

SEC. 4. Section 7085 of the Government Code is amended to read:

7085. (a) The agency shall submit a report to the Legislature every five years beginning January 1, 1998, that evaluates the effect of the program on employment, investment, and incomes, and on state and local tax revenues in designated enterprise zones. The report shall include an agency review of the progress and effectiveness of each enterprise zone. The Franchise Tax Board shall make available to the agency and the Legislature aggregate information on the dollar value of enterprise zone tax credits that are claimed each year by businesses.

(b) An enterprise zone governing body shall provide information at the request of the agency as necessary for the agency to prepare the report required pursuant to subdivision (a).

SEC. 5. Section 7085.5 is added to the Government Code, to read:

7085.5. The Franchise Tax Board shall annually make available to the agency and the Legislature information, by enterprise zone and by city or county, on the dollar value of the enterprise zone tax credits that are claimed each year by businesses and shall design and distribute forms and instructions that will allow the following information to be accessible:

(a) The number of jobs for which the hiring credits are claimed.

(b) The number of new employees for which hiring credits are claimed.

(c) The number of businesses claiming each individual tax credit.

(d) The nature of the business claiming each individual tax credit.

(e) The distribution of zone tax incentives among industry groups.

(f) The distribution of zone tax incentives by the annual receipts and asset value of the business claiming each individual tax credit.

(g) Any other information that the Franchise Tax Board and the agency deem to be important in determining the cost to, and benefit derived by, the taxpayers of the state.

SEC. 6. Section 15316 is added to the Government Code, to read:

15316. (a) The Legislature hereby finds and declares that economic development corporations are an integral component of the state's job creation effort because they are a critical link between the state's primary agency for economic development, the Trade and Commerce Agency, and the statewide business community, providing excellent leverage of the state's resources. Economic development corporations provide broad public benefit to the residents of this state by helping to alleviate unemployment, encouraging private investment, and diversifying local economies.

(b) "Economic development corporations" mean local and regional nonprofit organizations of public and private cooperation whose activities further the economic development of the communities they serve. Economic development corporations engage in a wide range of programs and strategies to attract, retain, and expand business. These may include marketing the community, small business lending, and other financial services, a wide range of technical assistance to small business, preparation of economic data, and business advocacy.

SEC. 7. Section 25536.3 is added to the Government Code, to read:

25536.3. (a) In addition to the authority provided in Section 25536, the Sacramento County Board of Supervisors, by a four-fifths vote of the board, may sell or enter into a lease, concession, or managerial contract involving a specified area of county property that the county has acquired from the federal government due to the closure of Mather Air Force Base or McClellan Air Force Base

without complying with this article if all of the following conditions have been met, or the board of supervisors makes a finding in a noticed public hearing that these conditions were satisfied at the time the property was acquired from the federal government:

(1) Reuse of the property is governed solely by the county and no part of the property is included in a redevelopment area.

(2) The county has prepared and adopted a general plan or specific plan pursuant to Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7, adopted a zoning ordinance for the area, and the proposed use is consistent with that general plan or specific plan and the zoning ordinance.

(3) The airport land use commission has prepared and adopted a comprehensive airport land use plan for the area pursuant to Article 3.5 (commencing with Section 21670) of Part 1 of Division 9 of the Public Utilities Code and the proposed use is consistent with that plan.

(4) The county has complied with Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 and Section 65402 with regard to the property, as provided by Section 25350.1.

(5) Notice is given pursuant to Section 6062a and posted in the office of the county clerk. The notice shall specify the date that the board determines any of the affected property will be subject to this section, and shall describe the property proposed to be sold, leased, or subject to a concession or managerial contract pursuant to this section; the proposed terms; the location where offers will be accepted and executed; and the telephone number and address of the county officer responsible for executing the sale, lease, concession, or managerial contract.

(b) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 8. The Legislature hereby finds and declares that a special statute is necessary and that a general statute cannot be made applicable, within the managing of Section 16 of Article IV of the California Constitution, because of unique circumstances applicable to Sacramento County. Sacramento County has been adversely affected by base closures and areas have been identified within Mather Air Force Base and McClellan Air Force Base where the board of supervisors needs to sell, lease, and allow a concession or managerial contract in a manner that allows for coordinated development of the area. In order to respond to this need, a special statute is needed and a general statute cannot be made applicable.

CHAPTER 462

An act to add Section 5343.5 to the Food and Agricultural Code, to amend Sections 11106, 12001, 12026.2, 12072, 12076, 12077, and 12082 of the Penal Code, and to amend Section 20 of Chapter 1326 of the Statutes of 1992, relating to firearms.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 5343.5 is added to the Food and Agricultural Code, to read:

5343.5. At any inspection station maintained at or near the California border by the director pursuant to Section 5341, the following sign shall be conspicuously posted in block letters not less than four inches in height:

"NOTICE: IF YOU ARE A CALIFORNIA RESIDENT, THE FEDERAL GUN CONTROL ACT MAY PROHIBIT YOU FROM BRINGING WITH YOU INTO THIS STATE FIREARMS THAT YOU ACQUIRED OUTSIDE OF THIS STATE.

IN ADDITION, IF YOU ARE A NEW CALIFORNIA RESIDENT, STATE LAW REGULATES YOUR BRINGING INTO CALIFORNIA HANDGUNS AND OTHER DESIGNATED FIREARMS AND MANDATES THAT SPECIFIC PROCEDURES BE FOLLOWED.

IF YOU HAVE ANY QUESTIONS ABOUT THE PROCEDURES TO BE FOLLOWED IN BRINGING FIREARMS INTO CALIFORNIA OR TRANSFERRING FIREARMS WITHIN CALIFORNIA, YOU SHOULD CONTACT THE CALIFORNIA DEPARTMENT OF JUSTICE OR A LOCAL CALIFORNIA LAW ENFORCEMENT AGENCY."

SEC. 2. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry firearms issued pursuant to Section 12050, information reported to the Department of Justice pursuant to Section 12053, dealers' records of sales of firearms, reports provided pursuant to Section 12072 or 12078, forms provided pursuant to Section 12084, reports provided pursuant to Section 12071 that are not dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as

photographic, photostatic, and nonerasable optically stored reproductions.

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

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

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

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

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

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

12084, or reports made to the department pursuant to Section 12078 or any other law.

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

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

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

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

SEC. 3. Section 12001 of the Penal Code is amended to read:

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

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

(c) As used in Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078, and 12101 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, the term "firearm" includes the frame or receiver of the weapon.

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

(e) (1) For purposes of Sections 12070, 12071, and subdivisions (b), (c), (d), and (f) of Section 12072, the term "firearm" does not include an unloaded firearm which is defined as an "antique firearm" in Section 921(a)(16) of Title 18 of the United States Code.

(2) For purposes of Sections 12070, 12071, and subdivisions (b), (c), and (d) of Section 12072, the term "firearm" does not include an unloaded firearm that meets both of the following:

(A) It is not a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) It is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

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

(g) For purposes of Sections 12551 and 12552, the term "BB device" means any instrument which expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun.

(h) As used in this title, "wholesaler" means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who sells, transfers, or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to Section 12071, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms in furtherance of that purpose.

"Wholesaler" shall not include a manufacturer, importer, or gunsmith who is licensed to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code or a person licensed pursuant to Section 12071 and the regulations issued pursuant thereto. A wholesaler also does not include those persons dealing exclusively in grips, stocks, and other parts of firearms that are not frames or receivers thereof.

(i) As used in Section 12071, 12072, or 12084, "application to purchase" means any of the following:

(1) The initial completion of the register by the purchaser, transferee, or person being loaned the firearm as required by subdivision (b) of Section 12076.

(2) The initial completion of the LEFT by the purchaser, transferee, or person being loaned the firearm as required by subdivision (d) of Section 12084.

(3) The initial completion and transmission to the department of the record of electronic or telephonic transfer by the dealer on the purchaser, transferee, or person being loaned the firearm as required by subdivision (c) of Section 12076.

(j) For purposes of Section 12023, a firearm shall be deemed to be "loaded" whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person.

(k) For purposes of Sections 12021, 12021.1, 12025, 12070, 12072, 12073, 12078, and 12101 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, notwithstanding the fact that the term "any firearm" may be used in those sections, each firearm or the frame or receiver of the same shall constitute a distinct and separate offense under those sections.

(*l*) For purposes of Section 12020, a violation of that section as to each firearm, weapon, or device enumerated therein shall constitute a distinct and separate offense.

(m) Each application that requires any firearms eligibility determination involving the issuance of any license, permit, or certificate pursuant to this title shall include two copies of the applicant's fingerprints on forms prescribed by the Department of Justice. One copy of the fingerprints may be submitted to the United States Federal Bureau of Investigation.

(n) As used in this chapter, a "personal handgun importer" means an individual who meets all of the following criteria:

(1) He or she is not a person licensed pursuant to Section 12071.

(2) He or she is not a licensed manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(3) He or she is not a licensed importer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) He or she is the owner of a pistol, revolver, or other firearm capable of being concealed upon the person.

(5) He or she acquired that pistol, revolver, or other firearm capable of being concealed upon the person outside of California.

(6) He or she moves into this state on or after January 1, 1998, as a resident of this state.

(7) He or she intends to possess that pistol, revolver, or other firearm capable of being concealed upon the person within this state on or after January 1, 1998.

(8) The pistol, revolver, or other firearm capable of being concealed upon the person was not delivered to him or her by a person licensed pursuant to Section 12071 who delivered that firearm following the procedures set forth in Section 12071 and subdivision (c) of Section 12072.

(9) He or she, while a resident of this state, had not previously reported his or her ownership of that pistol, revolver, or other firearm capable of being concealed upon the person to the Department of Justice in a manner prescribed by the department that included information concerning him or her and a description of the firearm.

(10) The pistol, revolver, or other firearm capable of being concealed upon the person is not a firearm that is prohibited by subdivision (a) of Section 12020.

(11) The pistol, revolver, or other firearm capable of being concealed upon the person is not an assault weapon, as defined in Section 12276.

(12) The pistol, revolver, or other firearm capable of being concealed upon the person is not a machinegun, as defined in Section 12200.

(13) The person is 18 years of age or older.

(o) For purposes of paragraph (6) of subdivision (n):

(1) Except as provided in paragraph (2), residency shall be determined in the same manner as is the case for establishing residency pursuant to Section 12505 of the Vehicle Code.

(2) In the case of members of the armed forces of the United States, residency shall be deemed to be established when he or she was discharged from active service in this state.

SEC. 4. Section 12026.2 of the Penal Code is amended to read:

12026.2. (a) Section 12025 does not apply to, or affect, any of the following:

(1) The possession of a firearm by an authorized participant in a motion picture, television, or video production or entertainment event when the participant lawfully uses the firearm as part of that production or event or while going directly to, or coming directly from, that production or event.

(2) The possession of a firearm in a locked container by a member of any club or organization, organized for the purpose of lawfully collecting and lawfully displaying pistols, revolvers, or other firearms, while the member is at meetings of the clubs or organizations or while going directly to, and coming directly from, those meetings.

(3) The transportation of a firearm by a participant when going directly to, or coming directly from, a recognized safety or hunter safety class, or a recognized sporting event involving that firearm.

(4) The transportation of a firearm by a person listed in Section 12026 directly between any of the places mentioned in Section 12026.

(5) The transportation of a firearm by a person when going directly to, or coming directly from, a fixed place of business or private residential property for the purpose of the lawful repair or the lawful transfer, sale, or loan of that firearm.

(6) The transportation of a firearm by a person listed in Section 12026 when going directly from the place where that person lawfully received that firearm to that person's place of residence or place of business or to private property owned or lawfully possessed by that person.

(7) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show, swap meet, or similar event to which the public is invited, for the purpose of displaying that firearm in a lawful manner.

(8) The transportation of a firearm by an authorized employee or agent of a supplier of firearms when going directly to, or coming directly from, a motion picture, television, or video production or entertainment event for the purpose of providing that firearm to an authorized participant to lawfully use as a part of that production or event.

(9) The transportation of a firearm by a person when going directly to, or coming directly from, a target range, which holds a regulatory or business license, for the purposes of practicing shooting at targets with that firearm at that target range.

(10) The transportation of a firearm by a person when going directly to, or coming directly from, a place designated by a person authorized to issue licenses pursuant to Section 12050 when done at the request of the issuing agency so that the issuing agency can determine whether or not a license should be issued to that person to carry that firearm.

(11) The transportation of a firearm by a person when going directly to, or coming directly from, a law enforcement agency for the purpose of a lawful transfer, sale, or loan of that firearm pursuant to Section 12084.

(12) The transportation of a firearm by a person when going directly to, or coming directly from, a lawful camping activity for the purpose of having that firearm available for lawful personal protection while at the lawful campsite. This paragraph shall not be construed to override the statutory authority granted to the Department of Parks and Recreation or any other state or local governmental agencies to promulgate rules and regulations governing the administration of parks and campgrounds.

(13) The transportation of a firearm by a person in order to comply with subdivision (c) or (i) of Section 12078 as it pertains to that firearm.

(14) The transportation of a firearm by a person in order to utilize subdivision (*l*) of Section 12078 as it pertains to that firearm.

(15) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, for the purpose of lawfully transferring, selling, or loaning that firearm in accordance with subdivision (d) of Section 12072.

(16) The transportation of a firearm by a person in order to utilize paragraph (3) of subdivision (a) of Section 12078 as it pertains to that firearm.

(17) The transportation of a firearm by a person who finds the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm and if that firearm is being transported to a law enforcement agency, the person gives prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency.

(18) The transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law, if he or she gives prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(19) The transportation of a firearm by a person in order to comply with paragraph (2) of subdivision (f) of Section 12072 as it pertains to that firearm.

(20) The transportation of a firearm by a person in order to comply with paragraph (3) of subdivision (f) of Section 12072 as it pertains to that firearm.

(b) In order for a firearm to be exempted under subdivision (a), while being transported to or from a place, the firearm shall be unloaded, kept in a locked container, as defined in subdivision (d), and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(c) This section does not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with this chapter.

(d) As used in this section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

SEC. 5. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, deliver, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

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

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor.

(B) Subparagraph (A) shall not apply to or affect those circumstances set forth in subdivision (p) of Section 12078.

(4) No person, corporation, or dealer shall sell, loan, or transfer a firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (c) or (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (c) or (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(6) The dealer shall comply with the provisions of paragraph (18) of subdivision (b) of Section 12071.

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

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

(1) Prior to April 1, 1997, within 15 days of the application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 15 days of the submission to the department of any correction to the application, or within 15 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. Prior to April 1, 1997, within 10 days of the application to purchase any firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. On or after April 1, 1997, within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

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

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or

12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly grading the examination falsely.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

(f) (1) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(A) The person presents proof of licensure pursuant to Section 12071 to that person.

(B) The person presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(2) (A) On or after January 1, 1998, within 60 days of bringing a pistol, revolver, or other firearm capable of being concealed upon the person into this state, a personal handgun importer shall do one of the following:

(i) Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question.

(ii) Sell or transfer the firearm in accordance with the provisions of subdivision (d) or in accordance with the provisions of an exemption from subdivision (d).

(iii) Sell or transfer the firearm to a dealer licensed pursuant to Section 12071.

(iv) Sell or transfer the firearm to a sheriff or police department.

(B) If the personal handgun importer sells or transfers the pistol, revolver, or other firearm capable of being concealed upon the person pursuant to subdivision (d) of Section 12072 and the sale or transfer cannot be completed by the dealer to the purchaser or transferee, and the firearm can be returned to the personal handgun importer, the personal handgun importer shall have complied with the provisions of this paragraph.

(C) The provisions of this paragraph are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and different provisions of the Penal Code shall not be punished under more than one provision.

(D) (i) On and after January 1, 1998, the department shall conduct a public education and notification program regarding this paragraph to ensure a high degree of publicity of the provisions of this paragraph.

(ii) As part of the public education and notification program described in this subparagraph, the department shall do all of the following:

(I) Work in conjunction with the Department of Motor Vehicles to ensure that any person who is subject to this paragraph is advised of the provisions of this paragraph, and provided with blank copies of the report described in clause (i) of subparagraph (A) at the time that person applies for a California driver's license or registers his or her motor vehicle in accordance with the Vehicle Code.

(II) Make the reports referred to in clause (i) of subparagraph (A) available to dealers licensed pursuant to Section 12071.

(III) Make the reports referred to in clause (i) of subparagraph (A) available to law enforcement agencies.

(IV) Make persons subject to the provisions of this paragraph aware of the fact that reports referred to in clause (i) of subparagraph (A) may be completed at either the licensed premises of dealers licensed pursuant to Section 12071 or at law enforcement agencies, that it is advisable to do so for the sake of accuracy and completeness of the reports, that prior to transporting a pistol, revolver, or other firearm capable of being concealed upon the person to a law enforcement agency in order to comply with subparagraph (A), the person should give prior notice to the law enforcement agency that

he or she is doing so, and that in any event, the pistol, revolver, or other firearm capable of being concealed upon the person should be transported unloaded and in a locked container.

(iii) Any costs incurred by the department to implement this paragraph shall be absorbed by the department within its existing budget and the fees in the Dealers' Record of Sale Special Account allocated for implementation of this subparagraph pursuant to Section 12076.

(3) Where a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, acquires a pistol, revolver, or other firearm capable of being concealed upon the person that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, outside of this state, takes actual possession of that firearm outside of this state pursuant to the provisions of subsection (j) of Section 923 of Title 18 of the United States Code, as amended by Public Law 104-208, and transports that firearm into this state, within five days of that licensed collector transporting that firearm into this state, he or she shall report to the department in a format prescribed by the department his or her acquisition of that firearm.

(4) (A) It is the intent of the Legislature that a violation of paragraph (2) or (3) shall not constitute a "continuing offense" and the statute of limitations for commencing a prosecution for a violation of paragraph (2) or (3) commences on the date that the applicable grace period specified in paragraph (2) or (3) expires.

(B) Paragraphs (2) and (3) shall not apply to a person who reports his or her ownership of a pistol, revolver, or other firearm capable of being concealed upon the person after the applicable grace period specified in paragraph (2) or (3) expires if evidence of that violation arises only as the result of the person submitting the report described in paragraph (2) or (3).

(g) (1) Except as provided in paragraph (2) or (3), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison for two, three, or four years.

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(F) A violation of subdivision (b) involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not exceeding one year or in the state prison, or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment.

(A) A violation of paragraph (2) of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of paragraph (4) of subdivision (a).

(D) A violation of paragraph (5) of subdivision (a).

(E) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person.

(F) A violation of paragraph (1), (3), (4), or (5) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(G) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(H) A violation of subdivision (e).

(4) If both of the following circumstances apply, an additional term of imprisonment in the state prison for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed.

(A) A violation of paragraph (2) of subdivision (a) or subdivision (b).

(B) The firearm transferred in violation of paragraph (2) of subdivision (a) or subdivision (b) is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

SEC. 5.5. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, deliver, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

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

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor.

(B) Subparagraph (A) shall not apply to or affect those circumstances set forth in subdivision (p) of Section 12078.

(4) No person, corporation, or dealer shall sell, loan, or transfer a firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (c) or (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (c) or (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(6) The dealer shall comply with the provisions of paragraph (18) of subdivision (b) of Section 12071.

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

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

(1) Prior to April 1, 1997, within 15 days of the application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 15 days of the submission to the department of any correction to the application, or within 15 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. Prior to April 1, 1997, within 10 days of the application to purchase any firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. On or after April 1, 1997, within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

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

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

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

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(6) Commencing July 1, 1998, a dealer shall provide the purchaser or transferee of a firearm, or person being loaned a firearm, a trigger lock or similar device designed for that firearm. The trigger lock or similar device shall be designed to prevent the unintentional discharge of the firearm. The provisions of this paragraph shall not apply to any purchaser, transferee, or other persons being loaned a relic, curio, memorabilia, or display firearm.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly grading the examination falsely.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

(f) (1) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code

shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(A) The person presents proof of licensure pursuant to Section 12071 to that person.

(B) The person presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(2) (A) On or after January 1, 1998, within 60 days of bringing a pistol, revolver, or other firearm capable of being concealed upon the person into this state, a personal handgun importer shall do one of the following:

(i) Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question.

(ii) Sell or transfer the firearm in accordance with the provisions of subdivision (d) or in accordance with the provisions of an exemption from subdivision (d).

(iii) Sell or transfer the firearm to a dealer licensed pursuant to Section 12071.

(iv) Sell or transfer the firearm to a sheriff or police department.

(B) If the personal handgun importer sells or transfers the pistol, revolver, or other firearm capable of being concealed upon the person pursuant to subdivision (d) of Section 12072 and the sale or transfer cannot be completed by the dealer to the purchaser or transferee, and the firearm can be returned to the personal handgun importer, the personal handgun importer shall have complied with the provisions of this paragraph.

(C) The provisions of this paragraph are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and different provisions of the Penal Code shall not be punished under more than one provision.

(D) (i) On and after January 1, 1998, the department shall conduct a public education and notification program regarding this paragraph to ensure a high degree of publicity of the provisions of this paragraph.

(ii) As part of the public education and notification program described in this subparagraph, the department shall do all of the following:

(I) Work in conjunction with the Department of Motor Vehicles to ensure that any person who is subject to this paragraph is advised of the provisions of this paragraph, and provided with blank copies of the report described in clause (i) of subparagraph (A) at the time

that person applies for a California driver's license or registers his or her motor vehicle in accordance with the Vehicle Code.

(II) Make the reports referred to in clause (i) of subparagraph (A) available to dealers licensed pursuant to Section 12071.

(III) Make the reports referred to in clause (i) of subparagraph (A) available to law enforcement agencies.

(IV) Make persons subject to the provisions of this paragraph aware of the fact that reports referred to in clause (i) of subparagraph (A) may be completed at either the licensed premises of dealers licensed pursuant to Section 12071 or at law enforcement agencies, that it is advisable to do so for the sake of accuracy and completeness of the reports, that prior to transporting a pistol, revolver, or other firearm capable of being concealed upon the person to a law enforcement agency in order to comply with subparagraph (A), the person should give prior notice to the law enforcement agency that he or she is doing so, and that in any event, the pistol, revolver, or other firearm capable of being concealed upon the person should be transported unloaded and in a locked container.

(iii) Any costs incurred by the department to implement this paragraph shall be absorbed by the department within its existing budget and the fees in the Dealers' Record of Sale Special Account allocated for implementation of this subparagraph pursuant to Section 12076.

(3) Where a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, acquires a pistol, revolver, or other firearm capable of being concealed upon the person that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, outside of this state, takes actual possession of that firearm outside of this state pursuant to the provisions of subsection (j) of Section 923 of Title 18 of the United States Code, as amended by Public Law 104-208, and transports that firearm into this state, within five days of that licensed collector transporting that firearm into this state, he or she shall report to the department in a format prescribed by the department his or her acquisition of that firearm.

(4) (A) It is the intent of the Legislature that a violation of paragraph (2) or (3) shall not constitute a "continuing offense" and the statute of limitations for commencing a prosecution for a violation of paragraph (2) or (3) commences on the date that the applicable grace period specified in paragraph (2) or (3) expires.

(B) Paragraphs (2) and (3) shall not apply to a person who reports his or her ownership of a pistol, revolver, or other firearm capable of being concealed upon the person after the applicable grace period specified in paragraph (2) or (3) expires if evidence of that violation arises only as the result of the person submitting the report described in paragraph (2) or (3).

(g) (1) Except as provided in paragraph (2) or (3), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison for two, three, or four years.

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(F) A violation of subdivision (b) involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not exceeding one year or in the state prison, or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment.

(A) A violation of paragraph (2) of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of paragraph (4) of subdivision (a).

(D) A violation of paragraph (5) of subdivision (a).

(E) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person.

(F) A violation of paragraph (1), (3), (4), or (5) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(G) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(H) A violation of subdivision (e).

(4) If both of the following circumstances apply, an additional term of imprisonment in the state prison for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed.

(A) A violation of paragraph (2) of subdivision (a) or subdivision (b).

(B) The firearm transferred in violation of paragraph (2) of subdivision (a) or subdivision (b) is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

SEC. 6. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the department shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her

current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephone transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale was made, or if the sale was made in a district in

which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may charge the dealer a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized

pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, and Sections 12289 and 12809.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any

number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

(4) "Seller" means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 6.5. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the department shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the

presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephone transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person

described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification

requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, and Sections 12289 and 12809.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

(4) "Seller" means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 7. Section 12077 of the Penal Code is amended to read:

12077. (a) The Department of Justice shall prescribe the form of the register and the record of electronic or telephonic transfer pursuant to Section 12074.

(b) For pistols, revolvers, and other firearms capable of being concealed upon the person, information contained in the register or record of electronic or telephonic transfer shall be the date and time of sale, make of firearm, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, dealer waiting period exemption pursuant to subdivision (n) of Section 12078, dangerous weapons permitholder waiting period exemption pursuant to subdivision (r) of Section 12078, curio and relic waiting period exemption pursuant to subdivision (t) of Section 12078, California Firearms Dealer number issued pursuant to Section 12071, purchaser's basic firearms safety certificate number issued pursuant

to Sections 12805 and 12809, manufacturer's name if stamped on the firearm, model name or number, if stamped on the firearm, if applicable, serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, color of the firearm, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, any information required by Section 12082, and a statement of the penalties for any person signing a fictitious name or address or for knowingly furnishing any incorrect information or for knowingly omitting any information required to be provided for the register.

(c) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, information contained in the register or record of electronic or telephonic transfer shall be the date and time of sale, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, auction or event waiting period exemption pursuant to subdivision (g) of Section 12078, California Firearms Dealer number issued pursuant to Section 12071, dangerous weapons permitholder waiting period exemption pursuant to subdivision (r) of Section 12078, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase, including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions

Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, any information required by Section 12082, and a statement of the penalties for any person signing a fictitious name or address or for knowingly furnishing any incorrect information or for knowingly omitting any information required to be provided for the register.

(d) Where the register is used, the following shall apply:

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

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

(3) Each dealer shall be provided instructions regarding the procedure for completion of the form and routing of the form. Dealers shall comply with these instructions which shall include the information set forth in this subdivision.

(4) One firearm transaction shall be reported on each record of sale document. For purposes of this subdivision, a "transaction" means a single sale, loan, or transfer of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(e) The dealer or salesperson making a sale shall ensure that all required information has been obtained from the purchaser. The dealer and all salespersons shall be informed that incomplete information will delay sales.

(f) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm or the person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

SEC. 8. Section 12082 of the Penal Code is amended to read:

12082. (a) A person shall complete any sale, loan, or transfer of a firearm through a person licensed pursuant to Section 12071 in accordance with this section in order to comply with subdivision (d) of Section 12072. The seller or transferor or the person loaning the firearm shall deliver the firearm to the dealer who shall retain possession of that firearm. The dealer shall then deliver the firearm to the purchaser or transferee or the person being loaned the firearm, if it is not prohibited, in accordance with subdivision (c) of Section 12072. If the dealer cannot legally deliver the firearm to the purchaser or transferee or the person being loaned the firearm, the

dealer shall forthwith, without waiting for the conclusion of the waiting period described in Sections 12071 and 12072, return the firearm to the transferor or seller or the person loaning the firearm. The dealer shall not return the firearm to the seller or transferor or the person loaning the firearm when to do so would constitute a violation of subdivision (a) of Section 12072. If the dealer cannot legally return the firearm to the transferor or seller or the person loaning the firearm, then the dealer shall forthwith deliver the firearm to the sheriff of the county or the chief of police or other head of a municipal police department of any city or city and county who shall then dispose of the firearm in the manner provided by Sections 12028 and 12032. The purchaser or transferee or person being loaned the firearm may be required by the dealer to pay a fee not to exceed ten dollars ($10) per firearm, plus the applicable fee that the Department of Justice may charge pursuant to Section 12076. Nothing in these provisions shall prevent a dealer from charging a smaller fee. The fee that the department may charge is the fee that would be applicable pursuant to Section 12076, if the dealer was selling, transferring, or delivering a firearm to a purchaser or transferee or person being loaned a firearm, without any other parties being involved in the transaction.

(b) The Attorney General shall adopt regulations under this section to do all of the following:

(1) Allow the seller or transferor of the person loaning the firearm, and the purchaser or transferee or the person being loaned the firearm, to complete a sale, loan, or transfer through a dealer, and to allow those persons and the dealer to comply with the requirements of this section and Sections 12071, 12072, 12076, and 12077 and to preserve the confidentiality of those records.

(2) Where a personal handgun importer is selling or transferring a pistol, revolver, or other firearm capable of being concealed upon the person to comply with clause (ii) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, to allow a personal handgun importer's ownership of the pistol, revolver, or other firearm capable of being concealed upon the person being sold or transferred to be recorded in a manner that if the firearm is returned to that personal handgun importer because the sale or transfer cannot be completed, the Department of Justice will have sufficient information about that personal handgun importer so that a record of his or her ownership can be maintained in the registry provided by subdivision (c) of Section 11106.

(3) Ensure that the register or record of electronic or telephonic transfer shall state the name and address of the seller or transferor of the firearm or the person loaning the firearm and whether or not the person is a personal handgun importer in addition to any other information required by Section 12077.

(c) A violation of this section by a dealer is a misdemeanor.

SEC. 9. Notwithstanding any other provision of law, the Department of Justice may exercise its authority pursuant to Section 12076 of the Penal Code to adjust the fees set forth in subdivision (e) and paragraph (1) of subdivision (f) of Section 12076 of the Penal Code in an amount not to exceed the increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations in order to cover the actual costs of implementing the provisions of this act.

SEC. 10. Section 20 of Chapter 1326 of the Statutes of 1992 is amended to read:

Sec. 20. It is the intent of the Legislature in enacting this act that to the extent practicable, the Department of Justice shall promulgate a uniform form that may be utilized pursuant to paragraphs (2) and (3) of subdivision (f) of Section 12072 and Section 12078 of the Penal Code.

SEC. 11. Section 5.5 of this bill incorporates amendments to Section 12072 of the Penal Code proposed by both this bill and AB 1124. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 12072 of the Penal Code, and (3) this bill is enacted after AB 1124, in which case Section 5 of this bill shall not become operative.

SEC. 12. Section 6.5 of this bill incorporates amendments to Section 12076 of the Penal Code proposed by both this bill and SB 591. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 12076 of the Penal Code, and (3) this bill is enacted after SB 591, in which case Section 12076 of the Penal Code, as amended by SB 591, shall remain operative only until the operative date of this bill, at which time Section 6.5 of this bill shall become operative, and Section 6 of this bill shall not become operative.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

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

CHAPTER 463

An act to amend Section 12316 of the Penal Code, relating to firearms.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 12316 of the Penal Code is amended to read:

12316. (a) (1) Any person, corporation, or dealer who does either of the following shall be punished by imprisonment in a county jail for a term not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or by both the imprisonment and fine:

(A) Sells any ammunition or reloaded ammunition to a person knowing that person to be under 18 years of age.

(B) Sells any ammunition or reloaded ammunition designed and intended for use in a pistol, revolver, or other firearm capable of being concealed upon the person to a person knowing that person to be under 21 years of age. As used in this subparagraph, "ammunition" means handgun ammunition as defined in subdivision (a) of Section 12323. Where ammunition or reloaded ammunition may be used in both a rifle and a handgun, federal law shall be considered for purposes of enforcing this subparagraph.

(2) Proof that a person, corporation, or dealer, or his or her agent or employee, demanded, was shown, and acted in reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this subdivision. As used in this subdivision, "bona fide evidence of majority and identity" means 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, California state identification card, identification card issued to a member of the armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

(b) (1) No person prohibited from owning or possessing a firearm under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

(2) For purposes of this subdivision, "ammunition" shall include, but not be limited to, any bullet, cartridge, magazine, clip, speed

loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.

(3) A violation of this subdivision is punishable by imprisonment in a county jail not to exceed one year or in the state prison, by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment.

(c) Unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under subparagraph (A) of paragraph (1) of subdivision (a) of Section 12027. This subdivision shall not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making an arrest or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle guard, who is engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code. A violation of this subdivision is punishable by imprisonment in a county jail for a term not to exceed six months, a fine not to exceed one thousand dollars ($1,000), or both the imprisonment and fine.

SEC. 2. Section 12316 of the Penal Code is amended to read:

12316. (a) (1) Any person, corporation, or dealer who does either of the following shall be punished by imprisonment in a county jail for a term not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or by both the imprisonment and fine:

(A) Sells any ammunition or reloaded ammunition to a person knowing that person to be under 18 years of age.

(B) Sells any ammunition or reloaded ammunition designed and intended for use in a pistol, revolver, or other firearm capable of being concealed upon the person to a person knowing that person to be under 21 years of age. As used in this subparagraph, "ammunition" means handgun ammunition as defined in subdivision (a) of Section 12323. Where ammunition or reloaded ammunition may be used in both a rifle and a handgun, federal law shall be considered for purposes of enforcing this subparagraph.

(2) Proof that a person, corporation, or dealer, or his or her agent or employee, demanded, was shown, and acted in reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this subdivision. As used in this subdivision, "bona fide evidence of majority and identity" means 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, California state identification card, identification card issued to a member of the armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

(b) (1) No person prohibited from owning or possessing a firearm under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

(2) For purposes of this subdivision, "ammunition" shall include, but not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.

(3) A violation of this subdivision is punishable by imprisonment in a county jail not to exceed one year or in the state prison, by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment.

(c) Unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under subparagraph (A) of paragraph (1) of subdivision (a) of Section 12027. This subdivision shall not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making an arrest or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle guard, who is engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code. A violation of this subdivision is punishable by imprisonment in a county jail for a term not to exceed six months, a fine not to exceed one thousand dollars ($1,000), or both the imprisonment and fine.

(d) (1) A violation of paragraph (1) of subdivision (b) is justifiable where all of the following conditions are met:

(A) The person found the ammunition or reloaded ammunition or took the ammunition or reloaded ammunition from a person who was committing a crime against him or her.

(B) The person possessed the ammunition or reloaded ammunition no longer than was necessary to deliver or transport the

ammunition or reloaded ammunition to a law enforcement agency for that agency's disposition according to law.

(C) The person is prohibited from possessing any ammunition or reloaded ammunition solely because that person is prohibited from owning or possessing a firearm only by virtue of Section 12021.

(2) Upon the trial for violating paragraph (1) of subdivision (b), the trier of fact shall determine whether the defendant is subject to the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she is subject to the exemption provided by this subdivision.

SEC. 3. Section 2 of this bill incorporates amendments to Section 12316 of the Penal Code proposed by both this bill and AB 78. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 12316 of the Penal Code, and (3) this bill is enacted after AB 78, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because 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 464

An act to amend Section 148 of the Penal Code, relating to arrest.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 148 of the Penal Code is amended to read:

148. (a) (1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding

one thousand dollars ($1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(2) Except as provided by subdivision (d) of Section 653t, every person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a police radio frequency shall be punished by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(b) Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other than a firearm, from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment in a county jail not to exceed one year or in the state prison.

(c) Every person who, during the commission of any offense described in subdivision (a), removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment in the state prison.

(d) Except as provided in subdivision (c) and notwithstanding subdivision (a) of Section 489, every person who removes or takes without intent to permanently deprive, or who attempts to remove or take a firearm from the person of, or immediate presence of, a public officer or peace officer, while the officer is engaged in the performance of his or her lawful duties, shall be punished by imprisonment in a county jail not to exceed one year or in the state prison.

In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:

(1) The officer's holster strap was unfastened by the defendant.

(2) The firearm was partially removed from the officer's holster by the defendant.

(3) The firearm safety was released by the defendant.

(4) An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.

(5) An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.

(6) The defendant's fingerprint was found on the firearm or holster.

(7) Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.

(8) In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

(e) A person shall not be convicted of a violation of subdivision (a) in addition to a conviction of a violation of subdivision (b), (c), or (d) when the resistance, delay, or obstruction, and the removal or taking

of the weapon or firearm or attempt thereof, was committed against the same public officer, peace officer, or emergency medical technician. A person may be convicted of multiple violations of this section if more than one public officer, peace officer, or emergency medical technician are victims.

(f) This section shall not apply if the public officer, peace officer, or emergency medical technician is disarmed while engaged in a criminal act.

CHAPTER 465

An act to add and repeal Section 190.26 of the Penal Code, relating to murder, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.]

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

SECTION 1. Section 190.26 is added to the Penal Code, to read:

190.26. (a) Notwithstanding any other provision of law, every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of life without the possibility of parole if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties, and any of the following facts has been charged and found true:

(1) The defendant specifically intended to kill the peace officer.

(2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.7, on a peace officer.

(3) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5.

(4) The defendant personally used a deadly or dangerous weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.

(b) If the court, in its discretion, strikes the facts charged under subdivision (a) in furtherance of justice pursuant to Section 1385, the defendant shall suffer confinement in the state prison for a term of 25 years to life, in accordance with Section 190.

(c) Nothing in this section shall be construed to prohibit the charging or finding of any special circumstance pursuant to Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

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.

SEC. 3. Section 1 of this act, which adds Section 190.26 to the Penal Code, shall become inoperative if and when Assembly Bill 446 of the 1997–98 Regular Session is approved by the voters at a statewide election, and as of the date of that approval the section is repealed.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The year of 1996 marked the third straight year that peace officer fatalities in this state have increased. Immediate implementation of this act is therefore necessary in order to protect those peace officers who jeopardize their lives for their fellow citizens.

CHAPTER 466

An act to amend Section 51350 of the Health and Safety Code, relating to housing bonds, and making an appropriation therefor.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 51350 of the Health and Safety Code is amended to read:

51350. (a) The agency may, from time to time, issue its bonds in the principal amount which the agency determines necessary to provide sufficient funds for financing housing developments and other residential structures and for the payment of interest on bonds of the agency, establishment of reserves to secure the bonds, and other expenditures of the agency incident to, and necessary or convenient to, issuance of the bonds.

(b) (1) Sale of the bonds of the agency shall be coordinated by the Treasurer. To obtain a date for the sale of bonds, the agency shall

inform the Treasurer of the amount of the proposed issue. Upon that notification, the Treasurer shall provide three 10-day periods, within the 90 days next following, when the bonds can be sold. The agency may choose any date during the suggested periods or any other date to which the agency and the Treasurer have mutually agreed. The Treasurer shall sell the bonds on the date chosen according to terms approved by the agency.

(2) The agency shall exercise its powers with due regard for the right of the holders of bonds of the agency at any time outstanding, and nothing in, or done pursuant to, this section shall in any way limit, restrict, or alter the obligation or powers of the agency or any member, officer, or representative of the agency or the Treasurer to carry out and perform in every detail each and every convenant, agreement, or contract at any time made or entered into on behalf of the agency with respect to its bonds or its benefits, or the security of the holders of the bonds.

(c) Except as provided in subdivisions (d), (e), (f), (g), and (h), the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall not exceed seven hundred fifty million dollars ($750,000,000), exclusive of the principal indebtedness of bonds issued to refund or renew previously issued bonds of the agency, to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(d) Effective January 1, 1980, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be increased by seven hundred fifty million dollars ($750,000,000), exclusive of (1) bonds previously authorized pursuant to subdivision (c), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(e) Effective January 1, 1983, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be additionally increased by three hundred fifty million dollars ($350,000,000) exclusive of (1) bonds previously authorized pursuant to subdivision (c) or (d), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the

period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(f) Effective January 1, 1984, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be additionally increased by five hundred million dollars ($500,000,000), exclusive of (1) bonds previously authorized pursuant to subdivision (c), (d), or (e), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(g) On the effective date of the amendments to this section enacted by the Statutes of 1985, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be additionally increased by six hundred million dollars ($600,000,000), exclusive of (1) bonds previously authorized pursuant to subdivision (c), (d), (e), or (f), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(h) On the effective date of the amendments to this section enacted by the Statutes of 1985, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be additionally increased by six hundred million dollars ($600,000,000), exclusive of (1) bonds previously authorized pursuant to subdivision (c), (d), (e), (f), or (g), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(i) Effective September 4, 1990, the aggregate principal amount of bonds which may be outstanding at any one time pursuant to this part shall be additionally increased by nine hundred million dollars ($900,000,000), exclusive of the following: (1) bonds previously authorized pursuant to subdivision (c), (d), (e), (f), (g), or (h), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal

indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(j) On the effective date of the amendments to this section which add this subdivision, the aggregate principal amount of bonds which may be outstanding at any one time pursuant to this part shall be additionally increased by nine hundred million dollars ($900,000,000), exclusive of the following: (1) bonds previously authorized pursuant to subdivision (c), (d), (e), (f), (g), (h), or (i), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(k) Effective January 1, 1998, the aggregate principal amount of bonds which may be outstanding at any one time pursuant to this part shall be additionally increased by one billion four hundred million dollars ($1,400,000,000), exclusive of: (1) bonds previously authorized pursuant to subdivision (c), (d), (e), (f), (g), (h), (i), or (j), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of the bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

CHAPTER 467

An act to add Section 2400.7 to, and to repeal Section 2400.5 of, the Vehicle Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 2400.5 of the Vehicle Code is repealed.

SEC. 2. Section 2400.7 is added to the Vehicle Code, to read:

2400.7. (a) The commissioner may enforce all laws regulating the operation of vehicles and on, and the use of, any portion of any expressway in the County of Santa Clara, if requested by a city or the county with respect to the portion of the highway within that city or county and if a contract is entered into between the state and that city or the county or any combination thereof.

(b) The contract shall require affected cities or the County of Santa Clara, or both, as the case may be, to pay to the commissioner, for deposit in the Motor Vehicle Account in the State Transportation Fund, an amount that is equal to the costs incurred by the department for services provided under the contract.

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

In order to provide the Commissioner of the California Highway Patrol with the needed authorization to enter into contracts with local governments at the earliest possible time, and to make related changes in the law, thereby allowing for enhanced enforcement of traffic laws, it is necessary that this act take effect immediately.

CHAPTER 468

An act to add Section 4006.5 to the Penal Code, relating to prisons.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 4006.5 is added to the Penal Code, to read:

4006.5. (a) Notwithstanding any other provision of law, a county board of supervisors or city council may enter into a contract with the federal government, or any department or agency thereof, to manage, control, and operate a federal prison located within the boundaries of that county or city.

(b) If a city or county enters into a contract pursuant to subdivision (a), the sheriff or chief of police, as appropriate, shall have sole and exclusive authority to keep the prison and the prisoners in it.

(c) If a city or county enters into a contract pursuant to subdivision (a), the employees working in the prison shall be employees of, and under the authority of, the sheriff or chief of police, as appropriate.

CHAPTER 469

An act to amend Section 7071.17 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 7071.17 of the Business and Professions Code is amended to read:

7071.17. (a) Notwithstanding any other provision of law, the board shall require, as a condition precedent to accepting an application for licensure, renewal, reinstatement, or to change officers or other personnel of record, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, materials supplier, or employee based on an entered and unsatisfied final judgment from a court of law, file or have on file with the board a judgment bond sufficient to guarantee payment of an amount equal to the unsatisfied final judgment or judgments. The applicant shall have 90 days from the date of notification by the board to file the bond or the application shall become void and the applicant shall reapply for issuance, reinstatement, or reactivation of a license. The board may not issue, reinstate, or reactivate a license until the judgment bond is filed with the board. The judgment bond is in addition to the contractor's bond. The bond shall be on file for a minimum of one year, after which the bond may be removed by submitting proof of satisfaction of all debts. The applicant may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond. The board shall include on the license application for issuance, reinstatement, or reactivation, a statement, to be made under penalty of perjury, as to whether there are any entered and unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, materials suppliers, or the applicant's employees. Notwithstanding any other provision of law, if it is found that the applicant falsified the statement then the license will be retroactively suspended to the date of issuance and the license will stay suspended until the judgment bond, satisfaction of judgment, or notarized copy of an accord reached with any individual holding an unsatisfied final judgment is filed.

(b) Notwithstanding any other provision of law, the licensee shall notify the registrar in writing of any entered and unsatisfied judgments within 90 days from the date of judgment. If the licensee fails to notify the registrar in writing within 90 days, the license shall be automatically suspended on the date that the registrar is informed, or is made aware of the unsatisfied judgment. The suspension shall

not be removed until proof of satisfaction of judgment, or in lieu thereof, a notarized copy of an accord is submitted to the registrar. If the licensee notifies the registrar in writing within 90 days of the date of judgment of any entered and unsatisfied judgments, the board shall require as a condition to the continual maintenance of the license that the licensee file or have on file with the board a judgment bond sufficient to guarantee payment of an amount equal to the unsatisfied judgment or judgments. The licensee has 90 days from date of notification by the board to file the bond or at the end of the 90 days the license shall be automatically suspended. The licensee may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond.

(c) By operation of law, failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension of any license to which this section applies.

(d) A license that is suspended for failure to file the bond, maintain the bond, or abide by the accord, can only be reinstated when proof of satisfaction of all debts is made, or when a notarized copy of an accord, reached with any individual holding an unsatisfied final judgment, has been filed.

(e) This section applies only with respect to an unsatisfied judgment that is substantially related to the construction activities of a licensee licensed under this chapter, or to the qualifications, functions, or duties of the license.

(f) This section shall not apply to an applicant or licensee when a bankruptcy proceeding has been filed.

(g) Except as otherwise provided, the judgment bond shall remain in full force in the amount posted until the entire debt is satisfied. If, at the time of renewal, the licensee submits proof of partial satisfaction of the outstanding final judgment, the board may authorize the judgment bond be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the judgment bond requirement may be removed.

(h) The board shall take the actions required by this section upon notification by any party having knowledge of the outstanding judgment upon a showing of proof of the judgment.

(i) For the purposes of this section, the term "judgment" includes any final arbitration award.

(j) The qualifying person and any member of the licensee or personnel of the licensee named as a judgment debtor in an unsatisfied final judgment from a court of law shall be automatically prohibited from serving as an officer, director, associate, partner, owner, qualifying individual, or other personnel of record of another licensee. This prohibition shall cause the license of any other existing renewable licensed entity with any of the same personnel of record as the judgment debtor licensee to be suspended until the license of

the judgment debtor is reinstated or until those same personnel of record disassociate themselves from the renewable licensed entity.

(k) For purposes of this section, a cash deposit may be submitted in lieu of the judgment bond.

CHAPTER 470

An act to amend Section 25124 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 25124 of the Health and Safety Code is amended to read:

25124. (a) Except as provided in subdivision (c), "waste" means any solid, liquid, semisolid, or contained gaseous discarded material that is not excluded by this chapter or by regulations adopted pursuant to this chapter.

(b) For purposes of subdivision (a), a discarded material is any material that is any of the following:

(1) Relinquished by being any of the following:

(A) Disposed of.

(B) Burned or incinerated.

(C) Accumulated, stored, or treated, but not recycled, before, or in lieu of, being relinquished by being disposed of, burned, or incinerated.

(2) Recycled, or accumulated, stored, or treated before recycling, except as provided in Section 25143.2.

(3) Poses a threat to public health or the environment and meets either, or both, of the following conditions:

(A) It is mislabeled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled.

(B) It is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.

(4) Considered inherently wastelike, as specified in regulations adopted by the department.

(c) Notwithstanding subdivision (a), a material is not a discarded material if it is either of the following:

(1) An intermediate manufacturing process stream.

(2) (A) Except as specified in subparagraph (B) and to the extent consistent with the federal act, a coolant, lubricant, or cutting fluid

necessary to the operation of manufacturing equipment, that is processed to extend the life of the material for continued use, and is processed in the same manufacturing equipment in which the material is used or in connected equipment that returns the material to the originating manufacturing equipment for continued use.

(B) Subparagraph (A) does not apply to any of the following material:

(i) Material that is processed in connected equipment that is not directly and permanently connected to the originating manufacturing equipment or that is constructed or operated in a manner that may allow the release of any material or constituent of the material into the environment.

(ii) Material that is a hazardous waste prior to being introduced into the manufacturing equipment or connected equipment.

(iii) Material that is removed from the manufacturing equipment or connected equipment for storage, treatment, disposal, or burning for energy recovery outside that equipment.

(iv) Material that remains in the manufacturing equipment or connected equipment more than 90 days after that equipment ceases to be operated.

(v) Material that is processed using methods other than physical procedures.

CHAPTER 471

An act to amend Sections 5274 and 5490 of the Business and Professions Code, and to repeal Section 3 of Chapter 495 of the Statutes of 1996, relating to advertising.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 5274 of the Business and Professions Code is amended to read:

5274. (a) None of the provisions of this chapter, except those in Article 4 (commencing with Section 5300), Sections 5400 to 5404, inclusive, and subdivision (d) of Section 5405, apply to an on-premises advertising display that is visible from an interstate or primary highway and located within a business center, if the display is placed and maintained pursuant to Chapter 2.5 (commencing with Section 5490) and meets all of the following conditions:

(1) The display is placed within the boundaries of an individual development project, as defined in Section 65928 of the Government Code, for commercial, industrial, or mixed commercial and industrial purposes, as shown on a subdivision or site map approved by a city,

county, or city and county, and is developed and zoned for those purposes.

(2) The display identifies the name of the business center, if named.

(3) Each business identified on the display is located within the business center and on the same side of an interstate or primary highway where the display is located.

(4) The governing body of the city, county, or city and county has adopted ordinances for the display pursuant to Sections 5230 and 5231 for the area where the display will be placed, and the display meets city, county, or city and county ordinances.

(5) The display results in a consolidation of allowable displays within the business center, so that fewer displays will be erected as a result of the display.

(6) Placement of the display does not cause a reduction of federal aid highway funds as provided in Section 131 of Title 23 of the United States Code.

SEC. 2. Section 5490 of the Business and Professions Code is amended to read:

5490. (a) This chapter applies only to lawfully erected on-premises advertising displays.

(b) As used in this chapter, "on-premises advertising displays" means any structure, housing, sign, device, figure, statuary, painting, display, message placard, or other contrivance, or any part thereof, that has been designed, constructed, created, intended, or engineered to have a useful life of 15 years or more, and intended or used to advertise, or to provide data or information in the nature of advertising, for any of the following purposes:

(1) To designate, identify, or indicate the name or business of the owner or occupant of the premises upon which the advertising display is located.

(2) To advertise the business conducted, services available or rendered, or the goods produced, sold, or available for sale, upon the property where the advertising display has been lawfully erected.

(c) As used in this chapter, "introduced or adopted prior to March 12, 1983," means an ordinance or other regulation of a city or county which was officially presented before, formally read and announced by, or adopted by the legislative body prior to March 12, 1983.

(d) This chapter does not apply to advertising displays used exclusively for outdoor advertising pursuant to the Outdoor Advertising Act (Chapter 2 (commencing with Section 5200)).

(e) As used in this chapter, illegal advertising displays do not include legally erected, but nonconforming, displays for which the applicable amortization period has not expired.

(f) As used in this chapter, "abandoned advertising display" means any display remaining in place or not maintained for a period of 90 days which no longer advertises or identifies an ongoing

business, product, or service available on the business premise where the display is located.

(g) (1) For the purpose of this chapter, an on-premises advertising display that is located within the boundaries of a development project, as defined by Section 65928 of the Government Code, that identifies the name of the development project, its business logo, or the goods, wares, and services existing or available within the development project, shall continue to be deemed an on-premise advertising display regardless of any of the following occurrences:

(A) The creation or construction, in or about the project, of a common parking area, driveway, thruway, alley, passway, public or private street, roadway, overpass, divider, connector, or easement intended for ingress or egress, regardless of where or when created or constructed, and whether or not created or constructed by the project developer or its successor, or by reason of government regulation or condition.

(B) The sale, transfer, or conveyance of an individual lot, parcel, or parcels less than the whole, within the development project.

(C) The sale, transfer, conveyance, or change of name or identification of a business within the development project.

(D) The subdivision of the parcel that includes the development project in accordance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

(2) This subdivision shall not be applicable in any case in which its application would result in a loss of federal highway funds by the State of California.

(3) This subdivision applies to all counties and general law or charter cities.

SEC. 3. Section 3 of Chapter 495 of the Statutes of 1996 is repealed.

CHAPTER 472

An act to amend Section 1749.5 of the Civil Code, and to amend Section 1520.5 of the Code of Civil Procedure, relating to gift certificates, and making an appropriation therefor.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 1749.5 of the Civil Code is amended to read:

1749.5. (a) On or after January 1, 1997, it is unlawful for any person or entity to sell a gift certificate to a purchaser containing an expiration date. Any gift certificate sold after that date shall be

redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder.

(b) A gift certificate sold without an expiration date is valid until redeemed or replaced.

(c) This section shall not apply to any of the following gift certificates issued on or after January 1, 1998, provided the expiration date appears in capital letters in at least 10-point font on the front of the gift certificate:

(1) Gift certificates that are distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money or other thing of value being given in exchange for the gift certificate by the consumer.

(2) Gift certificates that are sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes if the expiration date on those gift certificates is not more than 30 days after the date of sale.

(3) Gift certificates that are issued for a food product.

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

1520.5. Section 1520 shall not apply to gift certificates subject to Title 1.4A (commencing with Section 1749.5) of Part 4 of Division 3 of the Civil Code. However, Section 1520 shall apply to any gift certificate having an expiration date and that is given in exchange for money or other thing of value.

CHAPTER 473

An act to amend Sections 5443.5 and 5463 of the Business and Professions Code, relating to advertising.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 5443.5 of the Business and Professions Code is amended to read:

5443.5. Nothing in this article prohibits the Department of Transportation from allowing any legally permitted display situated on property being acquired for a public use to be relocated, subject to the approval of the public agency acquiring the property and the approval of the jurisdiction in which the display will be relocated, so long as the action of the department in allowing the relocation of the display would not cause a reduction in federal-aid highway funds, as provided in Section 131 of Title 23 of the United States Code, or an increase in the number of displays which do not conform to this article within the jurisdiction of a governmental entity.

SEC. 2. Section 5463 of the Business and Professions Code is amended to read:

5463. The director may revoke any license or permit for the failure to comply with this chapter and may remove and destroy any advertising display placed or maintained in violation of this chapter after 30 days' written notice posted on the structure or sign and a copy forwarded by mail to the display owner at his or her last known address.

Notwithstanding any other provision of this chapter, the director or any authorized employee may summarily and without notice remove and destroy any advertising display placed in violation of this chapter which is temporary in nature because of the materials of which it is constructed or because of the nature of the copy thereon.

For the purpose of removing or destroying any advertising display placed in violation of this chapter, the director or the director's authorized agent may enter upon private property.

CHAPTER 474

An act to amend Sections 4669.2, 4669.75, and 4669.8 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 4669.2 of the Welfare and Institutions Code is amended to read:

4669.2. (a) Notwithstanding any other provision of law, and provided that there shall be no reduction in direct service to persons eligible for services under this article, a regional center, with the approval of the State Department of Developmental Services, and in consultation with the local area boards, consumer and vendor advisory committees, and local advocacy organizations, may explore and implement any regional center service delivery alternative included in this section for consumers living in the community, as follows:

(1) Alternative service coordination for consumers.

(2) Technical and financial support to consumers, and where appropriate, their families, to provide or secure their own services in lieu of services that regional centers would otherwise provide, purchase, or secure. These programs shall be cost-effective in the aggregate, and shall be limited to consumers who are at imminent risk of moving to a more restrictive setting.

(3) Procedures whereby regional centers may negotiate levels of payment with providers for delivery of specific services to a group of

consumers through a mutually agreed upon contract with a specific term and a guaranteed reimbursement amount. Contracted services may be for any specific service or combination of services across vendor categories.

(4) Procedures whereby consumers, regional center representatives, area board representatives, and local service providers may jointly examine and make recommendations to the department for reduced reporting and recording requirements of regional centers. The recommendations shall be made available upon request.

(5) Proposals to reduce reporting and recordkeeping requirements at a regional center.

(6) Procedures whereby a regional center may lease a facility and contract for the provision of services in that facility for regional center clients.

(7) Procedures that encourage innovative approaches to the sharing of administrative resources between regional centers and other public and private agencies serving persons with developmental disabilities.

(8) Proposals for a regional center to purchase a facility for its own office space if it can be shown to be cost-effective. No funds from a regional center's purchase of services budget shall be used for this purchase.

(b) Consultation pursuant to subdivision (a) shall occur during the development of the proposal prior to the public hearing conducted in accordance with Section 4669.75 and after the completion of the public hearing.

(c) The regional center shall annually submit to the State Department of Developmental Services a report on the implementation of the service delivery options approved by the department under this section. The report shall review the effects of the proposal, if applicable, upon the regional center purchase of service budget and the state budget, the impact on other regional center services, and the impact on consumers served under the proposal. This report shall be completed within 90 days of the end of each fiscal year.

SEC. 2. Section 4669.75 of the Welfare and Institutions Code is amended to read:

4669.75. (a) Any proposal approved by the department pursuant to this article may be implemented immediately upon approval. Prior to submitting a proposal to the department, the regional center shall conduct a public hearing to receive comments on the proposal. Notice of the public hearing shall be given at least 10 business days in advance of the hearing. The public hearing shall be conducted in accordance with this section.

(b) Notice shall include a summary of the proposal, analysis of the effect of the proposal upon the regional center budget and the state budget, the impact on regional center services, and the impact on

consumers served under the proposal, and a list of the statutes and regulations that will be waived under the proposal. No proposal approved under this article shall authorize a regional center to implement proposals that have not met all the requirements of this article. The department may not delegate its authority to review and approve proposals in accordance with this article.

(c) Each written comment submitted prior to the close of the final public hearing, and a summary of verbal testimony received, shall be considered by the regional center, and a summary of the responses to all comments shall be submitted as part of the proposal to the department. These comments and responses shall be made available, along with the proposal, for public review.

(d) A service delivery alternative shall be required to be implemented within the existing regional center funding allocation and shall be cost-effective to the state. No additional allocation shall be made to permit a regional center to implement a service delivery alternative. No proposal approved under this article shall authorize or give authority to a regional center to go forward with any other specific action or proposal that has not met all of the requirements of this article. The department may not delegate its authority to review and approve proposals in accordance with this article to a regional center or any other entity.

(e) Proposals approved by the department shall meet freedom of choice requirements pursuant to the assurances required in the home and community-based services waiver under Section 1396n of Title 42 of the United States Code.

(f) Information on regional center alternative systems, including recommendations regarding the maintenance or expansion of service delivery alternatives, shall be available to the Legislature, upon request, not later than March 31, 1998.

SEC. 3. Section 4669.8 of the Welfare and Institutions Code is amended to read:

4669.8. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

CHAPTER 475

An act to amend Sections 5528, 5600, 5615, 5616, 5626, 5681, 5682, 5683, 7200, 7616, 7635, 8010, 8017, 8018, 8024.5, 8024.6, 8025, 8030.2, 8030.4, 8030.6, and 8030.8 of, to add Sections 102.3 and 5624 to, to add and repeal Section 5620 of, to repeal Sections 5623, 5625, 5627, and 5628 of, and to repeal and add Sections 5621 and 5622 of, the Business and Professions Code, and to amend Section 7100 of, and to add Section 7100.1 to, the Health and Safety Code, relating to consumer affairs, and making an appropriation therefor.

[Approved by Governor September 24, 1997. Filed with
Secretary of State September 25, 1997.]

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

SECTION 1. Section 102.3 is added to the Business and Professions Code, to read:

102.3. (a) The director may enter into an interagency agreement with an appropriate entity within the Department of Consumer Affairs as provided for in Section 101 to delegate the duties, powers, purposes, responsibilities, and jurisdiction that have been succeeded and vested with the department, of a board, as defined in Section 477, which became inoperative and was repealed in accordance with Chapter 908 of the Statutes of 1994.

(b) (1) Where, pursuant to subdivision (a), an interagency agreement is entered into between the director and that entity, the entity receiving the delegation of authority may establish a technical committee to regulate, as directed by the entity, the profession subject to the authority that has been delegated. The entity may delegate to the technical committee only those powers that it received pursuant to the interagency agreement with the director. The technical committee shall have only those powers that have been delegated to it by the entity.

(2) Where the entity delegates its authority to adopt, amend, or repeal regulations to the technical committee, all regulations adopted, amended, or repealed by the technical committee shall be subject to the review and approval of the entity.

(3) The entity shall not delegate to a technical committee its authority to discipline a licentiate who has violated the provisions of the applicable chapter of the Business and Professions Code that is subject to the director's delegation of authority to the entity.

(c) An interagency agreement entered into, pursuant to subdivision (a), shall continue until such time as the licensing program administered by the technical committee has undergone a review by the Joint Legislative Sunset Review Committee to evaluate and determine whether the licensing program has demonstrated a public need for its continued existence. Thereafter, at the director's discretion, the interagency agreement may be renewed.

SEC. 1.2. Section 5528 of the Business and Professions Code is amended to read:

5528. (a) The board may select and contract with necessary architect consultants who are licensed architects to assist it in its enforcement program on an intermittent basis. The architect consultants shall perform only those services that are necessary to carry out and enforce this chapter.

(b) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any consultant under contract with the board shall be considered a public employee.

SEC. 2. Section 5600 of the Business and Professions Code is amended to read:

5600. (a) All licenses issued or renewed under this chapter shall expire at 12 midnight on the last day of the birth month of the licenseholder in each odd-numbered year following the issuance or renewal of the license.

(b) To renew an unexpired license, the licenseholder shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

(c) The renewal form shall include a statement specifying whether the licensee was convicted of a crime or disciplined by another public agency during the preceding renewal period and that the licensee's representations on the renewal form are true, correct, and contain no material omissions of fact, to the best knowledge and belief of the licensee.

SEC. 2.5. Section 5615 of the Business and Professions Code is amended to read:

5615. As used in this chapter:

"Landscape architect" means a person who holds a certificate to practice landscape architecture in this state under the authority of this chapter.

A person who practices landscape architecture within the meaning and intent of this article is a person who performs professional services, for the purpose of landscape preservation, development and enhancement, such as consultation, investigation, reconnaissance, research, planning, design, preparation of drawings, construction documents and specifications, and responsible construction observation. Landscape preservation, development and enhancement is the dominant purpose of services provided by landscape architects. Implementation of that purpose includes: (1) the preservation and aesthetic and functional enhancement of land uses and natural land features; (2) the location and construction of aesthetically pleasing and functional approaches and settings for structures and roadways; and, (3) design for trails and pedestrian walkway systems, plantings, landscape irrigation, landscape lighting, landscape grading and landscape drainage.

Landscape architects perform professional work in planning and design of land for human use and enjoyment. Based on analysis of environmental physical and social characteristics, and economic considerations, they produce overall plans and landscape project designs for integrated land use.

The practice of a landscape architect may, for the purpose of landscape preservation, development and enhancement, include: investigation, selection, and allocation of land and water resources for appropriate uses; feasibility studies; formulation of graphic and written criteria to govern the planning and design of land construction programs; preparation review, and analysis of master

plans for land use and development; production of overall site plans, landscape grading and landscape drainage plans, irrigation plans, planting plans, and construction details; specifications; cost estimates and reports for land development; collaboration in the design of roads, bridges, and structures with respect to the functional and aesthetic requirements of the areas on which they are to be placed; negotiation and arrangement for execution of land area projects; field observation and inspection of land area construction, restoration, and maintenance.

This practice shall include the location, arrangement, and design of those tangible objects and features as are incidental and necessary to the purposes outlined herein. Nothing herein shall preclude a duly licensed landscape architect from planning the development of land areas and elements used thereon or from performing any of the services described in this section in connection with the settings, approaches, or environment for buildings, structures, or facilities, in accordance with the accepted public standards of health, safety, and welfare.

This chapter shall not empower a landscape architect, registered under this chapter, to practice, or offer to practice, architecture or engineering in any of its various recognized branches.

SEC. 3. Section 5616 of the Business and Professions Code is amended to read:

5616. Any certified landscape architect who agrees to provide professional services pursuant to this chapter shall provide every customer with a detailed written contract. That written contract shall include, but not be limited to, all of the following:

(a) A full description of services to be rendered by the landscape architect.

(b) A list of any consultants who may be utilized under the contract.

(c) The date of completion of the work to be performed under the contract.

(d) The total price that is required to complete the contract which fully discloses one of the following:

(1) The amount of the lump sum of the services.

(2) The hourly fee, not to exceed an expressed amount.

(3) The percentage of the construction costs used in computing the total price.

(4) Any other method of payment agreed to by both parties.

(e) A notice in prominent type which reads: "LANDSCAPE ARCHITECTS ARE REGULATED BY THE STATE OF CALIFORNIA. ANY QUESTIONS CONCERNING A LANDSCAPE ARCHITECT MAY BE REFERRED TO THE LANDSCAPE ARCHITECT TECHNICAL COMMITTEE AT:

LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE
(CURRENT ADDRESS)
SACRAMENTO, CA. (CURRENT ZIP CODE)

(CURRENT AREA CODE AND TELEPHONE NUMBER)"

(f) The name, address, and certificate number of the landscape architect.

(g) A description of the procedure that the landscape architect and client will use to accommodate additional services.

SEC. 4. Section 5620 is added to the Business and Professions Code, to read:

5620. The duties, powers, purposes, responsibilities, and jurisdiction of the California State Board of Landscape Architects that were succeeded to and vested with the Department of Consumer Affairs in accordance with Chapter 908 of the Statutes of 1994 are hereby transferred to the California Board of Architectural Examiners. The Legislature finds that the purpose for the transfer of power is to promote and enhance the efficiency of state government and that assumption of the powers and duties by the California Board of Architectural Examiners shall not be viewed or construed as a precedent for the establishment of state regulation over a profession or vocation that was not previously regulated by a board, as defined in Section 477.

(a) There is in the Department of Consumer Affairs a California Board of Architectural Examiners as defined in Article 2 (commencing with Section 5510) of Chapter 3.

Whenever in this chapter "board" is used it refers to the California Board of Architectural Examiners.

(b) Except as provided herein, the board may delegate its authority under this chapter to the Landscape Architect Technical Committee.

(c) After review of proposed regulations, the board may direct the examining committee to notice and conduct hearings to adopt, amend, or repeal regulations pursuant to Section 5630, provided that the board itself shall take final action to adopt, amend, or repeal those regulations.

(d) The board shall not delegate its authority to discipline a landscape architect or to take action against a person who has violated this chapter.

(e) This section shall become inoperative on July 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2005, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 5. Section 5621 of the Business and Professions Code is repealed.

SEC. 6. Section 5621 is added to the Business and Professions Code, to read:

5621. (a) There is hereby created within the jurisdiction of the board, a Landscape Architect Technical Committee, hereinafter referred to in this chapter as the landscape architect committee.

(b) The landscape architect committee shall consist of five members who shall be licensed to practice landscape architecture in

this state. The Governor shall appoint three of the members. The Senate Committee on Rules and the Speaker of the Assembly shall appoint one member each.

(c) The initial members to be appointed by the Governor are as follows: one member for a term of one year; one member for a term of two years; one member for a term of three years. The Senate Committee on Rules and the Speaker of the Assembly shall initially each appoint one member for a term of four years. Thereafter, appointments shall be made for four-year terms, expiring on June 1 of the fourth year and until the appointment and qualification of his or her successor or until one year shall have elapsed whichever first occurs. Vacancies shall be filled for the unexpired term.

(d) No person shall serve as a member of the landscape architect committee for more than two consecutive terms.

(e) This section shall become inoperative on July 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 5622 of the Business and Professions Code is repealed.

SEC. 8. Section 5622 is added to the Business and Professions Code, to read:

5622. (a) The landscape architect committee may assist the board in the examination of candidates for a landscape architect's license and, after investigation, evaluate and make recommendations regarding potential violations of this chapter.

(b) The landscape architect committee may investigate, assist, and make recommendations to the board regarding the regulation of landscape architects in this state.

(c) The landscape architect committee may perform such duties and functions that have been delegated to it by the board pursuant to Section 5620.

(d) The landscape architect committee shall send a representative to all meetings of the full board to report on the committee's activities.

(e) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2005, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 8.5. Section 5623 of the Business and Professions Code is repealed.

SEC. 9. Section 5624 is added to the Business and Professions Code, to read:

5624. Each member of the landscape architect committee shall receive per diem and expenses, as provided in Section 103.

SEC. 9.2. Section 5625 of the Business and Professions Code is repealed.

SEC. 9.3. Section 5626 of the Business and Professions Code is amended to read:

5626. The executive officer shall keep an accurate record of all proceedings of the landscape architect committee.

SEC. 9.4. Section 5627 of the Business and Professions Code is repealed.

SEC. 9.5. Section 5628 of the Business and Professions Code is repealed.

SEC. 9.6. Section 5681 of the Business and Professions Code is amended to read:

5681. The amount of fees prescribed by this chapter is that fixed by the following schedule:

(a) The application fee for examination shall be fixed by the board in an amount not to exceed four hundred twenty-five dollars ($425).

(b) The fee for an original certificate shall be fixed by the board in an amount not to exceed four hundred dollars ($400), except that, if the certificate is issued less than one year before the date on which it will expire, then the fee shall equal 50 percent of the fee fixed by the board for an original certificate. The board may, by appropriate regulation, provide for the waiver or refund of the initial certificate fee where the certificate is issued less than 45 days before the date on which it will expire.

(c) The fee for a temporary certificate shall be fixed by the board in an amount not to exceed one hundred dollars ($100).

(d) The fee for a duplicate certificate shall be fixed by the board in an amount not to exceed fifty dollars ($50).

(e) The renewal fee shall be fixed by the board in an amount as it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, but not to exceed four hundred dollars ($400).

(f) The penalty for failure to notify the board of a change of address within 30 days from an actual change in address shall be fixed by the board in an amount not to exceed fifty dollars ($50).

(g) The delinquency fee shall be 50 percent of the renewal fee for the certificate in effect on the date of the renewal of the certificate, but not less than fifty dollars ($50) nor more than two hundred dollars ($200).

(h) The fee for a branch office shall be fixed by the board in an amount not to exceed fifty dollars ($50).

(i) The fee for filing an application for approval of a school pursuant to Section 5650 shall be set by the board at an amount not to exceed the cost of the approval process, but not to exceed six hundred dollars ($600) charged and collected on an biennial basis.

SEC. 9.7. Section 5682 of the Business and Professions Code is amended to read:

5682. Within 10 days after the beginning of every month, all fees collected by the department for the month preceding, under the provisions of this chapter, shall be paid into the State Treasury to the

credit of the California Board of Architectural Examiners-Landscape Architects Fund, which is hereby created.

SEC. 9.8. Section 5683 of the Business and Professions Code is amended to read:

5683. The money paid into the California Board of Architectural Examiners-Landscape Architects Fund is continuously appropriated to the board for expenditure in the manner prescribed by law to defray the expenses of the board and in carrying out and enforcing the provisions of this chapter.

SEC. 10. Section 7200 of the Business and Professions Code is amended to read:

7200. (a) There is in the Department of Consumer Affairs a State Board of Guide Dogs for the Blind in whom enforcement of this chapter is vested. The board shall consist of seven members appointed by the Governor. One member shall be the Director of Rehabilitation or his or her designated representative. The remaining members shall be persons who have shown a particular interest in dealing with the problems of the blind, and at least two of them shall be blind persons who use guide dogs.

(b) This section 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 the dates on which it becomes inoperative and is repealed.

SEC. 11. 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, either of the following:

(1) A suitable room for the storage of human remains.

(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, 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), 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.

(f) Every funeral establishment holding a funeral director's license on December 31, 1996, shall, upon application and payment of fees for renewal of its funeral director's license, be issued a funeral establishment license.

SEC. 12. Section 7635 of the Business and Professions Code is amended to read:

7635. (a) 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.

(b) This section shall not apply to anyone who has successfully passed the funeral director's examination pursuant to Section 7622.

SEC. 13. Section 8010 of the Business and Professions Code is amended to read:

8010. Information regarding a complaint against a specific licensee may not be disclosed to the public until an accusation has been filed by the board and the licensee has been notified of the filing of the accusation against his or her license and the disciplinary proceedings to be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. This section does not apply to citations, fines, or orders of abatement, which shall be disclosed to the public upon notice to the licensee.

SEC. 14. Section 8017 of the Business and Professions Code is amended to read:

8017. The practice of shorthand reporting is defined as the making, by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record of any oral court proceeding, deposition, or proceeding before any grand jury,

referee, or court commissioner and the accurate transcription thereof.

SEC. 15. Section 8018 of the Business and Professions Code is amended to read:

8018. Any natural person holding a valid certificate as a shorthand reporter, as provided in this chapter, shall be known as a "certified shorthand reporter." Except as provided in Section 8043, no other person, firm, or corporation may assume or use the title "certified shorthand reporter," or the abbreviation "C.S.R.," or use any words or symbols indicating or tending to indicate that he, she, or it is certified under this chapter.

SEC. 16. Section 8024.5 of the Business and Professions Code is amended to read:

8024.5. A certificate that is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued thereafter. The holder of the certificate shall return the expired certificate to the board. To obtain a new certificate, the holder shall pay all of the fees and meet all of the qualifications and requirements set forth in this chapter for obtaining an original certificate, including qualifying for, taking, and passing the licensing examination.

SEC. 17. Section 8024.6 of the Business and Professions Code is amended to read:

8024.6. (a) A certificate holder shall give written notice to the board at its office in Sacramento of a name change within 30 days after each change, giving both the old and the new names. A copy of the legal document affecting the name change, such as a court order or marriage certificate, shall be submitted with the notice.

(b) Each certificate holder shall notify the board in writing at its office in Sacramento of a change of address within 30 days after each change, giving both the old and the new addresses.

(c) A penalty as provided in this chapter shall be paid by each certificate holder who fails to notify the board within 30 days as specified in this section.

SEC. 18. 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, is conclusive evidence of the conviction.

(b) Failure to notify the board of a conviction described in subdivision (a), in accordance with Section 8024 or 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 of those notes 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 statutes, rules, and regulations pertaining to certified shorthand reporters.

SEC. 19. Section 8030.2 of the Business and Professions Code is amended to read:

8030.2. (a) To provide shorthand reporting services to low-income litigants in civil cases, who are unable to otherwise afford those services, funds generated by fees received by the board pursuant to subdivision (c) of Section 8031 in excess of funds needed to support the board's operating budget for the fiscal year in which a transfer described below is made shall be used by the board for the purpose of establishing and maintaining a Transcript Reimbursement Fund. The Transcript Reimbursement Fund shall be established by a transfer of funds from the Court Reporters' Fund and shall be maintained in an amount no less than three hundred thousand dollars ($300,000) for each fiscal year.

(b) All moneys held in the Court Reporters' Fund on the effective date of this section in excess of the board's operating budget for the 1996–97 fiscal year shall be used as provided in subdivision (a).

(c) Refunds and unexpended funds that are anticipated to remain in the Transcript Reimbursement Fund at the end of the fiscal year shall be considered by the board in establishing the fee assessment pursuant to Section 8031 so that the assessment shall maintain the Transcript Reimbursement Fund at the appropriate level in the following fiscal year.

(d) The Transcript Reimbursement Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government

Code, moneys in the Transcript Reimbursement Fund are continuously appropriated for the purposes of this chapter.

(e) Applicants who have been reimbursed pursuant to this chapter for services provided to litigants and who are awarded court costs or attorneys' fees by judgment or by settlement agreement, shall refund the full amount of that reimbursement to the fund within 90 days of receipt of the award or settlement.

(f) Subject to the limitations of this chapter, the board shall maintain the fund at a level that is sufficient to pay all qualified claims. To accomplish this objective, the board shall utilize all refunds, unexpended funds, fees, and any other moneys received by the board.

(g) Notwithstanding Section 16346 of the Government Code, all unencumbered funds remaining in the Transcript Reimbursement Fund as of June 29, 1999, shall be transferred to the Court Reporters' Fund.

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. 20. Section 8030.4 of the Business and Professions Code is amended to read:

8030.4. As used in this chapter:

(a) "Qualified legal services project" means a nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons, has a board of directors or advisory board composed of both attorneys and consumers of legal services, and provides for community participation in legal services programming. Legal services projects funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(b) "Qualified support center" means an incorporated nonprofit legal services center, having an office or offices in California, which office or offices provide legal services or technical assistance without charge to qualified legal services projects and their clients on a multicounty basis in California. Support centers funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(c) "Other qualified project" means a nonprofit organization formed for charitable or other public purposes, not receiving funds from the Legal Services Corporation or pursuant to the Older Americans Act, which organization or association provides free legal services to indigent persons.

(d) "Pro bono attorney" means any attorney, law firm, or legal corporation, licensed to practice law in this state, which undertakes

without charge to the party the representation of an indigent person, referred by a qualified legal services project, qualified support center, or other qualified project, in a case not considered to be fee generating as defined in this chapter.

(e) "Applicant" means a qualified legal services project, qualified support center, other qualified project, or pro bono attorney applying to receive funds from the Transcript Reimbursement Fund established by this chapter. The term "applicant" shall not include persons appearing pro se to represent themselves at any stage of the case.

(f) "Indigent person" means either a person whose income is 125 percent or less of the current poverty threshold established by the Office of Management and Budget of the United States, a disabled person whose income after meeting medical and other disability-related special expenses is 125 percent or less of that current poverty threshold, or a person who receives or is eligible to receive supplemental security income.

(g) "Fee-generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from an opposing party. A reasonable expectation as to payment of a legal fee exists wherever a client enters into a contingent fee agreement with his or her lawyer. If there is no contingent fee agreement, a case is not considered fee generating if adequate representation is deemed to be unavailable because of the occurrence of any of the following circumstances:

(1) Where the applicant has determined that referral is not possible because of any of the following:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two private attorneys who have experience in the subject matter of the case.

(B) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee.

(C) The case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Where recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief; or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) Where a court appoints an applicant or an employee of an applicant pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) In any case involving the rights of a claimant under a public supported benefit program for which entitlement to benefit is based on need.

(h) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974, Public Law 93-355, as amended.

(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the Social Security Act, Public Law 92-603, as amended, or payment under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(j) "Lawyer referral service" means a lawyer referral program authorized by the State Bar of California pursuant to the rules of professional conduct.

(k) "Older Americans Act" means the Older Americans Act of 1965, Public Law 89-73, as amended.

(*l*) "Rules of professional conduct" means those rules adopted by the State Bar pursuant to Sections 6076 and 6077.

(m) "Certified shorthand reporter" means a shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) performing shorthand reporting services pursuant to Section 8017.

(n) "Case" means a single legal proceeding from its inception, through all levels of hearing, trial, and appeal, until its ultimate conclusion and disposition.

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. 21. Section 8030.6 of the Business and Professions Code is amended to read:

8030.6. The board shall disburse funds from the Transcript Reimbursement Fund for the costs, exclusive of per diem charges, of preparing either an original transcript and one copy thereof, or where appropriate, a copy of the transcript, of court or deposition proceedings, or both, incurred as a contractual obligation between the shorthand reporter and the applicant, for litigation conducted in California. If no deposition transcript is ordered, the board may reimburse the applicant or the certified shorthand reporter designated in the application for per diem costs. The rate of per diem for depositions shall not exceed seventy-five dollars ($75) for a half day, or one hundred twenty-five dollars ($125) for a full day. In the event that a transcript is ordered within one year of the date of the deposition, but subsequent to the per diem having been reimbursed by the Transcript Reimbursement Fund, the amount of the per diem

shall be deducted from the amount of transcript. Reimbursement may be obtained through the following procedures:

(a) The applicant or certified shorthand reporter shall promptly submit to the board the certified shorthand reporter's invoice for transcripts together with the appropriate documentation as is required by this chapter.

(b) Except as provided in subdivision (c), the board shall promptly determine if the applicant or the certified shorthand reporter is entitled to reimbursement under this chapter and shall make payment as follows:

(1) Regular customary charges for preparation of original deposition transcripts and one copy thereof, or a copy of the transcripts.

(2) Regular customary charges for expedited deposition transcripts up to a maximum of two thousand five hundred dollars ($2,500) per case.

(3) Regular customary charges for the preparation of original transcripts and one copy thereof, or a copy of transcripts of court proceedings.

(4) Regular customary charges for expedited or daily charges for preparation of original transcripts and one copy thereof or a copy of transcripts of court proceedings.

(5) The charges may not include notary or handling fees. The charges may include actual shipping costs and exhibits, except that the cost of exhibits may not exceed thirty-five cents ($0.35) each or a total of thirty-five dollars ($35) per transcript.

(c) The maximum amount reimbursable by the fund under subdivision (b) may not exceed twenty thousand dollars ($20,000) per case per year.

(d) If entitled, and funds are available, the board shall forthwith disburse the appropriate sum to the applicant or the certified shorthand reporter when documentation as provided in subdivision (d) of Section 8030.8 accompanies the application. A notice shall be sent to the recipient requiring the recipient to file a notice with the court in which the action is pending stating the sum of reimbursement paid pursuant to this section. The notice filed with the court shall also state that if the sum is subsequently included in any award of costs made in the action, that the sum is to be ordered refunded by the applicant to the Transcript Reimbursement Fund whenever the sum is actually recovered as costs. The court may not consider whether payment has been made from the Transcript Reimbursement Fund in determining the appropriateness of any award of costs to the parties. The board shall also forthwith notify the applicant that the reimbursed sum has been paid to the certified shorthand reporter and shall likewise notify the applicant of the duty to refund any of the sum actually recovered as costs in the action.

(e) If not entitled, the board shall forthwith return a copy of the invoice to the applicant and the designated certified shorthand reporter together with a notice stating the grounds for denial.

(f) The board shall complete its actions under this subdivision within 30 days of receipt of the invoice and all required documentation, including a completed application.

(g) Applications for reimbursements from the fund shall be filled on a first-come basis.

(h) Applications for reimbursement that cannot be paid from the fund due to insufficiency of the fund for that fiscal year shall be held over until the next fiscal year to be paid out of the renewed fund.

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. 22. Section 8030.8 of the Business and Professions Code is amended to read:

8030.8. (a) For purposes of this chapter, documentation accompanying an invoice is sufficient to establish entitlement for reimbursement from the Transcript Reimbursement Fund if it is filed with the executive officer on an application form prescribed by the board that is complete in all respects, and that establishes all of the following:

(1) The case name and number and that the litigant or litigants requesting the reimbursement are indigent persons.

(2) The applicant is qualified under the provisions of this chapter.

(3) The case is not a fee-generating case, as defined in Section 8030.4.

(4) The invoice or other documentation shall evidence that the certified shorthand reporter to be reimbursed was, at the time the services were rendered, a duly licensed certified shorthand reporter.

(5) The invoice shall be accompanied by a statement, signed by the applicant, stating that the charges are for transcripts actually provided as indicated on the invoice.

(6) The applicant has acknowledged, in writing, that as a condition of entitlement for reimbursement that the applicant agrees to refund the entire amount disbursed from the Transcript Reimbursement Fund from any costs or attorneys' fees awarded to the applicant by the court or provided for in any settlement agreement in the case.

(7) The certified shorthand reporter's invoice for transcripts shall include separate itemizations of charges claimed, as follows:

(A) Total charges and rates for customary services in preparation of an original transcript and one copy or a copy of the transcript of depositions.

(B) Total charges and rates for expedited deposition transcripts.

(C) Total charges and rates in connection with transcription of court proceedings.

(b) For an applicant claiming to be eligible pursuant to subdivision (a), (b), or (c) of Section 8030.4, a letter from the director of the project or center, certifying that the project or center meets the standards set forth in one of those subdivisions and that the litigant or litigants are indigent persons, is sufficient documentation to establish eligibility.

(c) For an applicant claiming to be eligible pursuant to subdivision (d) of Section 8030.4, a letter certifying that the applicant meets the requirements of that subdivision, that the case is not a fee-generating case, as defined in subdivision (g) of Section 8030.4, and that the litigant or litigants are indigent persons, together with a letter from the director of a project or center defined in subdivision (a), (b), or (c) of Section 8030.4 certifying that the litigant or litigants had been referred by that project or center to the applicant, is sufficient documentation to establish eligibility.

(d) The applicant may receive reimbursement directly from the board when the applicant has previously paid the certified shorthand reporter for transcripts as provided in Section 8030.6. To receive payment directly, the applicant shall submit, in addition to all other required documentation, an itemized statement signed by the certified shorthand reporter performing the services that describes payment for transcripts in accordance with the requirements of Section 8030.6.

(e) The board may prescribe appropriate forms to be used by applicants and certified reporters to facilitate these requirements.

(f) This chapter does not restrict the contractual obligation or payment for services, including, but not limited to, billing the applicant directly, during the pendency of the claim.

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. 23. Section 7100 of the Health and Safety Code is amended to read:

7100. (a) The right to control the disposition of the remains of a deceased person, and to arrange for funeral goods and services to be provided, unless other directions have been given by the decedent pursuant to Section 7100.1, vests in, and the duty of interment and the liability for the reasonable cost of interment of the remains devolves upon the following in the order named:

(1) The surviving spouse.

(2) The sole surviving adult child of the decedent, or if there is more than one adult child of the decedent, the majority of the surviving adult children. However, less than the majority shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving adult children of their instructions and are not aware of any opposition to those instructions on the part of one-half or more of all surviving adult children. For

purposes of this section, "adult child" means a competent natural or adopted child of the decedent who has attained 18 years of age.

(3) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving parent.

(4) The surviving person or persons respectively in the next degrees of kindred. If there is more than one surviving person of the same degree of kindred, the majority of those persons. Less than the majority of surviving persons of the same degree of kindred shall be vested with the rights and duties of this section if those persons have used reasonable efforts to notify all other surviving persons of the same degree of kindred of their instructions and are not aware of any opposition to those instructions on the part of one-half or more of all surviving persons of the same degree of kindred.

(5) The public administrator when the deceased has sufficient assets.

(b) A funeral director or cemetery authority shall have complete authority to control the disposition of the remains, and to proceed under this chapter to recover usual and customary charges for the disposition, when both of the following apply:

(1) Either of the following applies:

(A) The funeral director or cemetery authority has knowledge that none of the persons described in paragraphs (1) to (4) of subdivision (a) exists.

(B) None of the persons described in paragraphs (1) to (4) of subdivision (a) can be found after reasonable inquiry, or contacted by reasonable means.

(2) The public administrator fails to assume responsibility for disposition of the remains within seven days after having been given written notice of the facts. Written notice may be delivered by hand, U.S. mail, facsimile transmission, or telegraph.

(c) The liability for the reasonable cost of final disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent; provided, that should a person accept the gift of an entire body under subdivision (a) of Section 7155.5, that person, subject to the terms of the gift, shall be liable for the reasonable cost of final disposition of the decedent.

(d) This section shall be administered and construed to the end that the expressed instructions of the decedent or the person entitled to control the disposition shall be faithfully and promptly performed.

(e) A funeral director or cemetery authority shall not be liable to any person or persons for carrying out the instructions of the decedent or the person entitled to control the disposition.

SEC. 24. Section 7100.1 is added to the Health and Safety Code, to read:

7100.1. (a) A decedent, prior to death, may direct, in writing, the disposition of his or her remains and specify funeral goods and services to be provided. Unless there is a statement to the contrary that is signed and dated by the decedent, the directions may not be altered, changed, or otherwise amended in any material way, except as may be required by law, and shall be faithfully carried out upon his or her death, provided both of the following requirements are met: (1) the directions set forth clearly and completely the final wishes of the decedent in sufficient detail so as to preclude any material ambiguity with regard to the instructions; and, (2) the cost of the disposition and the funeral goods and services to be provided are held in trust pursuant to Section 7735 of the Business and Professions Code, funded through insurance, or otherwise set aside in a fund or funds designated for that purpose, so as to preclude the payment of any funds by the survivor or survivors of the deceased that might otherwise retain the right to control the disposition and arrange for funeral goods and services to be provided.

(b) In the event only one of either the cost of disposition or the cost of the funeral goods and services are set aside pursuant to this section, the remaining wishes of the decedent shall be carried out only to the extent that the decedent has sufficient assets to do so, unless the person or persons that otherwise have the right to control the disposition and arrange for funeral goods and services agree to assume the cost. All other provisions of the directions shall be carried out.

(c) If the directions are contained in a will, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

SEC. 25. 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 476

An act to amend Sections 12015.3 and 12246 of, and to add Section 12029 to, the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 12015.3 of the Business and Professions Code is amended to read:

12015.3. (a) The sealer may levy a civil penalty against a person violating any provision of this division or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars ($1,000) for each violation. It is a complete defense to a criminal prosecution for a violation of any provision of this division or a regulation adopted pursuant to any provision of this division that the defendant has been assessed and has paid a civil penalty under this section for the same act or acts constituting the violation. Any civil penalty under this section shall be cumulative to civil remedies or penalties imposed under any other law.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing. The request shall be made within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the sealer's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the sealer may take the action proposed without a hearing.

(c) If the person upon whom the sealer levied a civil penalty requested and appeared at a hearing, the person may appeal the sealer's decision to the secretary within 30 days of the date of receiving a copy of the sealer's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the sealer's decision. The appellant shall file a copy of the appeal with the sealer at the same time it is filed with the secretary.

(2) The appellant and the sealer may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the secretary stating grounds for affirming, modifying, or reversing the sealer's decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the sealer, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the sealer's decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the secretary may affirm the sealer's decision, modify the sealer's decision by reducing or increasing the amount of the penalty levied so that it is within the secretary's guidelines for imposing civil penalties, or reverse the sealer's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the sealer's notice of proposed action given pursuant to subdivision (b). A copy of the secretary's decision shall be delivered or mailed to the appellant and the sealer.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the secretary may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the appeal and review procedures provided in this section, the sealer, or his or her representative, may file a certified copy of a final decision of the sealer that directs the payment of a civil penalty and, if applicable, a copy of any decision of the secretary or his or her authorized representative rendered on an appeal from the sealer's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) If the civil penalty is levied by the State Sealer, the revenues derived therefrom shall be deposited in the Department of Food and

Agriculture Fund and, upon appropriation, shall be used by the State Sealer to carry out his or her responsibilities under this division. If the civil penalty is levied by the county sealer, the revenues shall be deposited in the general fund of the county and, upon appropriation by the board of supervisors, shall be used by the county sealer to carry out his or her responsibilities under this division.

(f) This section does not apply to violations involving utility meters, or to violations involving the testing and inspection of utility meters, in mobilehome parks, recreational vehicle parks, or apartment complexes, where the owner of the park or complex owns and is responsible for the utility meters.

(g) Upon the written request of the Attorney General of California, any district attorney, or any city prosecutor or city attorney described in subdivision (a) of Section 17206, the State Sealer or the county sealer within their respective jurisdictions, shall provide all reports and records regarding any actions that occurred within the four months prior to the date of the written request in which civil penalties were levied pursuant to this section or liability for costs incurred are determined pursuant to Section 12015.5.

(h) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2001, deletes or extends that date.

SEC. 2. Section 12029 is added to the Business and Professions Code, to read:

12029. The Legislative Analyst shall conduct a study of the civil penalties imposed pursuant to Section 12015.3 and report its findings to the Legislature and the Governor by January 1, 2000. The report shall include all of the following:

(a) An analysis of whether civil penalties are effective as an alternative enforcement mechanism for violations of weights and measures laws and regulations.

(b) A review of how the department and the counties use the revenue brought in from the civil penalties.

(c) A recommendation on whether civil penalties are a feasible alternative to criminal prosecution and criminal penalties.

SEC. 3. Section 12246 of the Business and Professions Code is amended to read:

12246. This article shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2001, deletes or extends that date.

CHAPTER 477

An act to amend Sections 3695.5, 3772.5, and 3791.4 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 3695.5 of the Revenue and Taxation Code is amended to read:

3695.5. In addition to the provisions of Sections 3695 and 3695.4 relative to objections to sales, any nonprofit organization may file with the county tax collector and county board of supervisors written objection to the sale for taxes of any residential or vacant real property which the nonprofit organization states in writing that it will rehabilitate and will:

(a) In the case of residential real property, rehabilitate and sell or rent to, or otherwise use the property to serve, low-income persons; or

(b) In the case of vacant real property, either construct residential dwellings on the property and sell or rent the property to low-income persons or dedicate the vacant property to public use, including those uses referred to in subdivision (a).

These objections shall be accompanied by an application to purchase the property under Chapter 8 (commencing with Section 3771) of this part, which shall be filed with the board of supervisors and the tax collector before the intended sale. If a nonprofit organization objects to the sale and, before the date of sale, applies in writing to the board of supervisors to purchase the property under Chapter 8 (commencing with Section 3771) of this part at a price not less than the minimum bid approved by the board of supervisors, the tax collector shall not proceed with the sale.

The terms "nonprofit organization," "low-income persons" and "rehabilitation" shall have the same meaning in this section as in Chapter 8 (commencing with Section 3771).

SEC. 2. Section 3772.5 of the Revenue and Taxation Code is amended to read:

3772.5. For purposes of this chapter:

(a) "Low-income persons" means persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code.

(b) "Nonprofit organization" means a nonprofit organization incorporated pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code for the purpose of acquisition of either of the following:

(1) Single-family or multifamily dwellings for rehabilitation and sale or rental to low-income persons, or for other use to serve low-income persons.

(2) Vacant land for construction of residential dwellings and subsequent sale or rental to low-income persons, for other use to

serve low-income persons, or for dedication of that vacant land to public use.

(c) "Rehabilitation" means repairs and improvements to a substandard building, as defined in subdivision (f) of Section 17920 of the Health and Safety Code, necessary to make it a building which is not a substandard building.

SEC. 3. Section 3791.4 of the Revenue and Taxation Code is amended to read:

3791.4. (a) When residential or vacant property has been tax defaulted for five years or more, that property may be purchased pursuant to this chapter by a nonprofit organization provided that:

(1) In the case of residential property, the nonprofit organization shall rehabilitate and sell or rent to, or otherwise use the property to serve, low-income persons.

(2) In the case of vacant property, the nonprofit organization shall construct residential dwellings on the property and sell or rent the property to low-income persons, otherwise use the property to serve low-income persons, or dedicate the vacant property to public use.

(b) If a nonprofit organization purchases the property pursuant to subdivision (a), the agreement under this chapter shall require the nonprofit organization to meet the conditions prescribed by subdivision (a) within two years after the date of recordation of the deed to the nonprofit organization, which period may be extended by resolution of the board of supervisors for a reasonable length of time. Upon granting of an extension, notice of the extension shall be given by the clerk of the board of supervisors to the tax collector and the Controller.

(c) The terms and conditions of any conveyance to a nonprofit corporation pursuant to this section shall be specified in the deed or other instrument of conveyance.

CHAPTER 478

An act to amend Section 903 of the Welfare and Institutions Code, relating to juveniles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 903 of the Welfare and Institutions Code is amended to read:

903. (a) The father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the reasonable costs of support of the minor

while the minor is placed, or detained in, or committed to, any institution or other place pursuant to Section 625 or pursuant to an order of the juvenile court. However, a county shall not levy charges for the costs of support of a minor detained pursuant to Section 625 unless, at the detention hearing, the juvenile court determines that detention of the minor should be continued, the petition for the offense for which the minor is detained is subsequently sustained, or the minor agrees to a program of supervision pursuant to Section 654. The liability of these persons and estates shall be a joint and several liability.

(b) The county shall limit the charges it seeks to impose to the reasonable costs of support of the minor and shall exclude any costs of incarceration, treatment, or supervision for the protection of society and the minor and the rehabilitation of the minor. In the event that court-ordered child support paid to the county pursuant to subdivision (a) exceeds the amount of the costs authorized by this subdivision and subdivision (a), the county shall either hold the excess in trust for the minor's future needs pursuant to Section 302.52 of Title 45 of the Code of Federal Regulations or, with the approval of the minor's caseworker or probation officer, pay the excess directly to the minor.

(c) It is the intent of the Legislature in enacting this subdivision to protect the fiscal integrity of the county, to protect persons against whom the county seeks to impose liability from excessive charges, to ensure reasonable uniformity throughout the state in the level of liability being imposed, and to ensure that liability is imposed only on persons with the ability to pay. In evaluating a family's financial ability to pay under this section, the county shall take into consideration the family's income, the necessary obligations of the family, and the number of persons dependent upon this income. Except as provided in paragraphs (1), (2), (3), and (4), "costs of support" as used in this section means only actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses, not to exceed a combined maximum cost of fifteen dollars ($15) per day, except that:

(1) The maximum cost of fifteen dollars ($15) per day shall be adjusted every third year beginning January 1, 1988, to reflect the percentage change in the calendar year annual average of the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations, for the three-year period.

(2) No cost for medical expenses shall be imposed by the county until the county has first exhausted any eligibility the minor may have under private insurance coverage, standard or medically indigent Medi-Cal coverage, and the Robert W. Crown California Children's Services Act (Article 2 (commencing with Section 248) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code).

(3) In calculating the cost of medical expenses, the county shall not charge in excess of 100 percent of the AFDC fee for service

average Medi-Cal payment for that county for that fiscal year as calculated by the State Department of Health Services; however, if a minor has extraordinary medical or dental costs that are not met under any of the coverages listed in paragraph (2), the county may impose these additional costs.

(4) For those placements of a minor subject to this section in which an AFDC–FC grant is made, the district attorney shall seek an order pursuant to Section 11350 and the statewide child support guideline in effect in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code. For purposes of determining the correct amount of support of a minor subject to this section, the rebuttable presumption set forth in Section 4057 of the Family Code is applicable.

(d) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of the minor, the estate of that person, or the estate of the minor, shall not be liable for the costs described in this section if a petition to declare the minor a dependent child of the court pursuant to Section 300 is dismissed at or before the jurisdictional hearing.

(e) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of a minor shall not be liable for the costs of support of that minor while the minor is temporarily placed or detained in any institution or other place pursuant to Section 625 or is committed to any institution or other place pursuant to an order of the juvenile court, if the minor is placed or detained because he or she is found by a court to have committed a crime against that person. Nothing in this subdivision shall be construed to extinguish a child support obligation between private parties.

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

It is necessary that this act take effect immediately in the interests of justice.

CHAPTER 479

An act relating to public utilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. The Energy Resources Conservation and Development Commission, in consultation with the Public Utilities

Commission, shall evaluate the net economic benefits that may be achieved by aggregation of electrical loads in small rural counties containing 250,000 persons or less. The evaluation shall include, but is not limited to, the feasibility and benefits of different forms of aggregation, including aggregation of county government electrical loads, aggregation of individual consumer's electrical loads, multicounty load aggregation, and the extent to which proximity of aggregated loads is significant in achieving economic benefits. On or before July 1, 1998, the Energy Resources Conservation and Development Commission shall submit a report to the Regional Council of Rural Counties and to the Chairs of the Senate Committee on Energy, Utilities and Communications and the Assembly Committee on Utilities and Commerce, conveying its assessment of options for electrical load aggregation in small rural counties and legislation, if any, which may be necessary to achieve any identified potential net economic benefits that are attributable to electrical load aggregation.

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

In order to implement the aggregation for electrical restructuring at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 480

An act to amend Section 66493 of the Government Code, relating to land use.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 66493 of the Government Code is amended to read:

66493. (a) Whenever any part of the subdivision is subject to a lien for taxes or special assessments collected as taxes which are not yet payable, the final map or parcel map shall not be recorded until the owner or subdivider does both of the following:

(1) Files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located a certificate or statement prepared by the appropriate state or local official giving his or her estimate of those taxes or assessments.

(2) Executes and files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located, security

conditioned upon the payment of all state, county, municipal, and local taxes and the current installment of principal and interest of all special assessments collected as taxes, which at the time the final map is recorded are a lien against the property, but which are not yet payable.

(b) If the land being subdivided is a portion of a larger parcel shown on the last preceding tax roll as a unit, the security for payment of taxes need be only for the sum which may be determined by the county to be sufficient to pay the current and delinquent taxes on the land being subdivided, together with all accrued penalties and costs if those taxes have been or are allowed to become delinquent. Separate assessor's parcel numbers shall be given to the portion of the larger parcel which is not within the proposed subdivision and to the parcel or parcels which are within the proposed subdivision.

If the land being subdivided is tax-defaulted, it may be redeemed without the redemption of the remainder of the larger parcel of which it is a part pursuant to the Revenue and Taxation Code as if it were held in ownership separate from and other than the ownership of the remainder.

(c) A county may, by ordinance, require that if a property owner or subdivider deposits cash to secure the payment of the estimated taxes or special assessments required in paragraph (a) or (b), the county tax collector shall draw upon the cash deposit, at the request of the taxpayer, to pay the taxes or special assessments when they are payable.

(d) A county may, by ordinance, after consultation with the tax collector, waive the requirement to secure the payment of estimated taxes or special assessments, as required by subdivision (a) or (b), for a final parcel map of four or fewer parcels or for a lot line adjustment.

(e) Whenever land subject to a special assessment or bond which may be paid in full is divided by the line of a lot or parcel of the subdivision, that assessment or bond shall be paid in full; security shall be filed with the clerk of the board of supervisors, payable to the county as trustee for the assessment bondholders for the payment of the special assessment or bond; or the responsibility for payment of the assessment shall be certified as segregated pursuant to subdivision (f).

(f) Whenever land subject to a special assessment for payment of a bond would be divided by the line of a lot or parcel of a subdivision, and the special assessment is not paid in full or secured pursuant to subdivision (e), the final map or parcel map shall not be recorded until the owner or subdivider files with the clerk of the board of supervisors of the county a certificate prepared by the clerk of the legislative body that created the assessment district. The certificate shall certify that the legislative body has determined that provision has been made for segregation of the responsibility of each of the proposed new parcels for a portion of the assessment payment

obligation in the manner provided in the statute pursuant to which the assessments were levied or to which the bonds were issued.

(g) In computing the amount of security for "taxes" in subdivision (a) or "current taxes" in subdivision (b), it shall only be necessary to consider amounts shown on the regular assessment roll or shown on any supplemental rolls prepared pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(h) This section shall not be applicable to amending maps filed in accordance with Section 66469.

CHAPTER 481

An act to amend Sections 4181, 4181.1, and 4651 of, and to add Section 4181.2 to, the Fish and Game Code, relating to game, and making an appropriation therefor.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 4181 of the Fish and Game Code is amended to read:

4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig, or gray squirrels, may apply to the department for a permit to kill the mammals. The department, upon satisfactory evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of the mammals under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions. Mammals so taken shall not be sold or shipped from the premises on which they are taken except under instructions from the department. No iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any type may be used to take any gray squirrel pursuant to this section. The department shall designate the type of trap to be used to insure the most humane method is used to trap gray squirrels. The department may require trapped squirrels to be released in parks or other nonagricultural areas. It shall be unlawful for any person to violate the terms of any permit issued under this section.

(b) The permit issued for taking bears pursuant to subdivision (a) shall contain the following facts:

(1) Why the issuance of the permit was necessary.

(2) What efforts were made to solve the problem without killing the bears.

(3) What corrective actions should be implemented to prevent reoccurrence.

(c) With respect to wild pigs, the department shall provide an applicant for a depredation permit to take wild pigs or a person who reports taking wild pigs pursuant to subdivision (b) of Section 4181.1 with written information that sets forth available options for wild pig control, including, but not limited to, depredation permits, allowing periodic access to licensed hunters, and holding special hunts authorized pursuant to Section 4188. The department may maintain and make available to these persons lists of licensed hunters interested in wild pig hunting and lists of nonprofit organizations that are available to take possession of depredating wild pig carcasses.

SEC. 2. Section 4181.1 of the Fish and Game Code is amended to read:

4181.1. (a) Any bear that is encountered while in the act of inflicting injury to, molesting, or killing, livestock may be taken immediately by the owner of the livestock or the owner's employee if the taking is reported no later than the next working day to the department and the carcass is made available to the department.

(b) Notwithstanding Section 4652, any wild pig that is encountered while in the act of inflicting injury to, molesting, pursuing, worrying, or killing livestock or damaging or destroying, or threatening to immediately damage or destroy, land or other property, including, but not limited to, rare, threatened, or endangered native plants, wildlife, or aquatic species, may be taken immediately by the owner of the livestock, land, or property or the owner's agent or employee, or by an agent or employee of any federal, state, county, or city entity when acting in his or her official capacity. The person taking the wild pig shall report the taking no later than the next working day to the department and shall make the carcass available to the department. Unless otherwise directed by the department and notwithstanding Section 4657, the person taking a wild pig pursuant to this subdivision, or to whom the carcass of a wild pig taken pursuant to this subdivision is transferred pursuant to subdivision (c), may possess the carcass of the wild pig. The person in possession of the carcass shall make use of the carcass, which may include an arrangement for the transfer of the carcass to another person or entity, such as a nonprofit organization, without compensation. The person who arranges this transfer shall be deemed to be in compliance with Section 4304. A violation of this subdivision is punishable pursuant to Section 12000. It is the intent of the Legislature that nothing in this subdivision shall be interpreted to authorize a person to take wild pigs pursuant to this subdivision in violation of a state statute or regulation or a local zoning or other ordinance that is adopted pursuant to other provisions of law and that restricts the discharge of firearms.

(c) The department shall make a record of each report made pursuant to subdivision (a) or (b) and may have an employee of the department investigate the taking or cause the taking to be investigated. The person taking a wild pig shall provide information as deemed necessary by the department. Upon completion of the investigation, the investigator may, upon a finding that the requirements of this section have been met with respect to the particular bear or wild pig taken under subdivision (a) or (b), issue a written statement to the person confirming that the requirements of this section have been met. The person who took the wild pig may transfer the carcass to another person without compensation.

(d) Notwithstanding Section 4763, any part of any bear lawfully possessed pursuant to this section is subject to Section 4758.

(e) Nothing in this section prohibits federal, state, or county trappers from killing or trapping bears when the bears are killing or molesting livestock, but no iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take the bear, and no person, including employees of the state, federal, or county government, shall take bear with iron-jawed or steel-jawed or any type of metal-jawed traps.

SEC. 3. Section 4181.2 is added to the Fish and Game Code, to read:

4181.2. For the purposes of this article relating to damage caused by wild pigs, "damage" means loss or harm resulting from injury to person or property. The department shall develop statewide guidelines to aid in determining the damage caused by wild pigs. The guidelines shall consider various uses of the land impacted by pigs.

SEC. 4. Section 4651 of the Fish and Game Code is amended to read:

4651. (a) The department shall prepare a plan for the management of wild pigs. Under the plan, the status and trend of wild pig populations shall be determined and management units shall be designated within the state. The plan may establish pig management zones to address regional needs and opportunities. In preparing the plan, the department shall consider available, existing information and literature relative to wild pigs.

(b) The plan may include all of the following:

(1) The distribution and abundance of wild pigs, as described in Section 3950.

(2) A survey of range conditions.

(3) Recommendations for investigations and utilization of wild pigs.

(4) Encouraging mitigation of depredation by sport hunting pursuant to this chapter.

(5) Live trapping and relocation of wild pigs to areas suitable and accessible to mitigation of depredation, with the consent of the landowner and after prior consultation with adjacent landowners

who, in the department's opinion may be impacted, pursuant to this chapter.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the 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 482

An act to amend Sections 22002, 22115, 22119.2, 22134, 22155, 22456, 22701, 22710, 22713, 22901, 22903, 22904, 22950, 22951, 22952, 22954, 22955, 23000, 23002, 23005, 23008, 24005, 24205, and 24950 of the Education Code, relating to school employees.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 22002 of the Education Code is amended to read:

22002. The Legislature recognizes that the assets of the State Teachers' Retirement System are insufficient to meet the obligations of that system already accrued or to accrue in the future in respect to service credited to members of that system prior to July 1, 1972. Therefore, the Legislature declares the following policies in respect to the financing of the State Teachers' Retirement System:

(a) Members shall contribute a percentage of creditable compensation, unless otherwise specified in this part.

(b) Employers shall contribute a percentage of the total creditable compensation on which member contributions are based.

(c) The state shall contribute a sum certain for a given number of years for the purpose of payment of benefits.

SEC. 2. Section 22115 of the Education Code is amended to read:

22115. (a) "Compensation earnable" means the annual creditable compensation that a person would earn in a school year if he or she were employed on a full-time basis and if that person worked full time in that position.

(b) The board may determine compensation earnable for persons employed on a part-time basis.

(c) For purposes of determining final compensation for persons employed on a part-time basis, compensation earnable shall be determined by dividing the creditable compensation earned by the service credit.

SEC. 3. Section 22119.2 of the Education Code is amended 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 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) Severance pay or compensatory damages or money paid to a member in excess of creditable compensation as a compromise settlement.

(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 and are not deducted from the member's salary.

(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. 4. 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 school 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 compensation earnable 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. 5. Section 22155 of the Education Code is amended to read:

22155. "Payroll" includes registers, warrants, and any other documents upon which the employer identifies persons to whom compensation is paid.

SEC. 6. Section 22456 of the Education Code is amended to read:

22456. At any time upon the request of the system, the employer shall furnish a statement of the amount of contributions deducted

from the compensation of any member, the service performed and the compensation earned by the member since the end of the period covered by the last report of the employer. The system may use the information shown in the statement in determining contributions to be paid by or to the member or to a beneficiary, or use it in determining the member's status upon retirement, even though the member's and employer's contributions will not be received by the board until after the payment or determination.

SEC. 7. Section 22701 of the Education Code is amended to read:

22701. (a) Service performed prior to July 1, 1972, shall be credited according to the provisions of law in effect at the time service was performed.

(b) Service performed on or after July 1, 1972, shall be credited in the proportion that creditable compensation earned by the member bears to the member's compensation earnable.

SEC. 8. Section 22710 of the Education Code is amended to read:

22710. (a) Service shall be credited, upon payment of the contributions required under Sections 22901 and 22950, for that time during which a member is excused from performance of creditable service and for which the member receives workers' compensation, or compensation from an insurance carrier of the employer, due to injury or illness that arose out of and in the course of the member's employment. Service for that time shall be credited in the proportion that the creditable compensation paid to the member bears to the compensation earnable by the member.

(b) The amount of creditable compensation paid to the member shall not exceed the compensation earnable by the member during the period of absence specified in subdivision (a).

SEC. 9. Section 22713 of the Education Code is amended to read:

22713. (a) Notwithstanding any other provision of this chapter, the governing board of a school district or a community college district or a county superintendent of schools may establish regulations that allow an employee who is a member to reduce his or her workload from full time to part time, and receive the service credit the member would have received if the member had been employed on a full-time basis and have his or her retirement allowance, as well as other benefits that the member is entitled to under this part, based, in part, on final compensation determined from the compensation earnable the member would have been entitled to if the member had been employed on a full-time basis.

(b) The regulations shall include, but shall not be limited to, the following:

(1) The option to reduce the member's workload shall be exercised at the request of the member and can be revoked only with the mutual consent of the employer and the member.

(2) The member shall have been employed full time to perform creditable service subject to coverage by the plan for at least 10 years

including five years immediately preceding the reduction in workload.

(3) The member shall not have had a break in service during the five years immediately preceding the reduction in workload. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. However, time spent on a sabbatical or other approved leave of absence shall not be used in computing the five-year full-time service requirement prescribed by this subdivision.

(4) The member shall have reached the age of 55 years prior to the reduction in workload.

(5) The period of the reduced workload shall not exceed 10 years.

(6) The reduced workload shall be equal to at least one-half of the full-time equivalent required by the member's contract of employment during his or her final year of full-time employment.

(7) The member shall be paid creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced his or her workload.

(c) Prior to the reduction of a member's workload under this section, the employer in conjunction with the administrative staff of the State Teachers' Retirement System and the Public Employees' Retirement System, shall verify the member's eligibility for the reduced workload program.

(d) The member shall make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis.

(e) The employer shall contribute to the Teachers' Retirement Fund at a rate specified by the board an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

SEC. 13. Section 22901 of the Education Code is amended to read:

22901. Each member of the plan shall contribute to the retirement fund an amount equivalent to 8 percent of the member's creditable compensation.

SEC. 14. Section 22903 of the Education Code is amended to read:

22903. Notwithstanding Sections 22901, 22956, and 23000, each school district, community college district, county board of education, and county superintendent of schools, may pick up, for the sole purpose of deferring taxes, as authorized by Section 414(h)(2) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 414(h)(2)) and Section 17501 of the Revenue and Taxation Code, all of the contributions required to be paid by a member of the plan, provided that the contributions are deducted from the creditable compensation of the member.

SEC. 15. Section 22904 of the Education Code is amended to read:

22904. Notwithstanding any other provision of law, the state may pick up all or a portion of the contributions required to be paid by a state employee who is a member of the plan, provided that the contributions are deducted from the creditable compensation of the member. The pick up of member contributions shall be through a salary reduction program pursuant to Section 414(h)(2) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 414(h)(2)). These contributions shall be reported as employer-paid member contributions, and shall be credited to the account of the member.

SEC. 16. Section 22950 of the Education Code is amended to read:

22950. Employers shall contribute monthly to the Teachers' Retirement Fund 8 percent of the creditable compensation upon which members' contributions are based.

SEC. 17. Section 22951 of the Education Code is amended to read:

22951. In addition to any other contributions required by this part, employers shall contribute monthly to the Teachers' Retirement Fund 0.25 percent of the creditable compensation upon which members' contributions are based.

SEC. 18. Section 22952 of the Education Code is amended to read:

22952. (a) Effective January 1, 1980, in addition to all other contributions required by this part, on account of liability for benefits pursuant to Section 24407, employers shall contribute monthly to the Teachers' Retirement Fund 0.307 percent of the creditable compensation upon which members' contributions are based.

(b) The Controller shall adjust the contributions required by this section within 10 days of notification by the board of the actual creditable compensation on which the contributions are based. A copy of the notification shall be transmitted to the Legislature, the Director of Finance, the Office of the Legislative Analyst, and the Commission on State Mandates. The payroll data shall be subject to audit by the Controller pursuant to Section 17558.5 of the Government Code.

SEC. 19. Section 22954 of the Education Code is amended to read:

22954. (a) In addition to any other contributions required by this part, on July 1, 1990, and on July 1 of each subsequent year, the Controller, subject to Section 24414, shall transfer, based on estimated payroll data provided by the board, the following percentages of the total of the prior year creditable compensation upon which members' contributions are based to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund, for the purpose of funding the supplemental payments authorized under Section 24415:

(1) For the fiscal year ending June 30, 1991	0.50%
(2) For the fiscal year ending June 30, 1992	1.00%
(3) For the fiscal year ending June 30, 1993	1.50%

(4) For the fiscal year ending June 30, 1994 ..... 2.00%
(5) For the fiscal year ending June 30, 1995, and each fiscal year thereafter 2.50%

These transfers shall be based upon estimated payroll data provided to the Director of Finance by the board and shall be adjusted in January of that same fiscal year to reflect actual payroll data.

(b) The board may deduct from the annual state contributions made pursuant to this section an amount necessary for the administrative expenses to implement Section 24415, subject to the annual Budget Act.

(c) Notwithstanding any other provision of law, it is the intent of the Legislature, in establishing the Supplemental Benefit Maintenance Program embodied in this section and Sections 22400, 24414, and 24415, to manifest a contractually enforceable promise to repay the Teachers' Retirement Fund in full, with interest, as provided in subdivision (b) of Section 24414, for all transfers or advances made from the Teachers' Retirement Fund pursuant to subdivision (a) of Section 24414 and for any funds appropriated by Item No. 1920-111-835 of the Budget Act of 1989 from the Teachers' Retirement Fund to provide purchasing power protection payments.

(d) Except as provided in subdivision (c), the Legislature reserves the right to reduce or terminate the state's contributions to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund provided by this section and to reduce or terminate the distributions required by Section 24415. It is intended that any legislative reduction or termination of the state's contributions to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund provided by this section or any reduction or termination of distributions required by Section 24415, shall be effectuated by a separate statute rather than by the annual Budget Act.

SEC. 20. Section 22955 of the Education Code is amended to read:

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing October 1, 1991, a continuous appropriation is hereby made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 4.3 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit when the unfunded obligation has been deemed to be eliminated by the board based upon a recommendation from its actuary. If a rate increase or decrease is required, the adjustment

may be for no more than 0.25 percent per year and in no case may the transfer exceed 4.3 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based.

(b) The funds transferred pursuant to subdivision (a) shall first be applied to meeting the normal cost deficit, if any, for that fiscal year.

(c) The transfers made pursuant to this section are in lieu of the state contributions formerly made pursuant to Sections 23401 and 23402.

(d) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22226 and the total of the member contribution rate required under Section 22804 and the employer contribution rate required under Section 23400, and shall exclude (1) the portion for unused sick leave service granted pursuant to Section 22719, and (2) the cost of benefit increases which occur after July 1, 1990. The contribution rates prescribed in Section 22804 and Section 23400 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the creditable compensation upon which member contributions are based to determine the dollar amount of the normal cost deficit for the year.

(e) Pursuant to Section 22001 and the case law, the members are entitled to a financially sound retirement system. The Legislature recognizes that the system shall, pursuant to this act, receive less funds in the short term than it would have received under former Sections 23401 and 23402 (Chapter 282 of the Statutes of 1979). However, it is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(f) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

(g) This section shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate that occurs after July 1, 1990.

(h) The amendments to this section during the 1991–92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

SEC. 21. Section 23000 of the Education Code is amended to read:

23000. Each employer shall deduct from the creditable compensation of members employed by the employer the member contributions required by this part and shall remit to the system those contributions plus the employer contributions required by this part and Section 44987.

SEC. 22. Section 23002 of the Education Code is amended to read:

23002. Member and employer contributions required by this part and Section 44987 are due in the office of the system five working days immediately following the period covered by the monthly report upon which the compensation earned during the period is being reported and from and upon which the contributions are due. Payments shall be delinquent on the sixth working day thereafter and regular interest on delinquent payments shall begin to accrue as of that day. The board shall authorize estimated payments of not less than 95 percent of the contributions due, and, in that case, the balance of contributions payable shall be due in the office of the system no more than 15 working days following the period covered by the monthly report upon which the contributions are based. This additional payment shall be delinquent on the 16th working day thereafter, and regular interest shall begin to accrue as of that day.

SEC. 23. Section 23005 of the Education Code is amended to read:

23005. Monthly reports are due in the office of the system 30 calendar days immediately following the month in which the compensation being reported was earned, and are delinquent 15 calendar days immediately thereafter.

SEC. 24. Section 23008 of the Education Code is amended to read:

23008. (a) If more or less than the required contributions specified in this part and Section 44987 are paid to the system based on any payment of creditable compensation to a member, proper adjustments shall be made by the county superintendent or other employing agency on a monthly report within 60 days of discovery or of notification by the system and any refunds shall be made to the member within the same time period by the employing agency.

(b) The board may assess penalties for late or improper adjustments pursuant to Section 23006. These penalties shall be no more than the regular interest as defined in Section 22162. The penalty so assessed shall be deemed interest earned in the year in which it was received.

(c) If a required report contains erroneous information and the system, acting in good faith, disburses funds from the Teacher's Retirement Fund based on that information, the county superintendent or other employing agency who submitted the report shall reimburse the retirement fund in full for the amount of the erroneous disbursement. Reimbursement shall be made immediately upon notification by the system.

SEC. 26. Section 24005 of the Education Code is amended to read:

24005. (a) A disability allowance shall become effective upon any date designated by the member, provided all of the following conditions are met:

(1) An application for disability allowance is filed on a form provided by the system.

(2) The effective date is later than the last day of creditable service for which compensation is payable to the member.

(3) The effective date is no earlier than either the first day of the month in which the application is received by the system's office in Sacramento, or the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(b) If the member is employed to perform creditable service subject to coverage by the plan at the time the disability allowance is approved, the member shall notify the system in writing, within 90 days, of the last day on which the member will perform service. If the member does not respond within 90 days, or if the last day on which service will be performed is more than 90 days after the date the system notifies the member of approval of the disability allowance, the member's application for a disability allowance shall be rejected and a disability allowance shall not be payable to the member.

SEC. 27. Section 24205 of the Education Code is amended to read:

24205. (a) The board shall, in consultation with members, develop, adopt, and implement an additional early retirement alternative that will allow a member to receive a minimum retirement allowance prior to normal retirement age if the member has at least attained early retirement age. Under the alternative, the member shall continue to receive the minimum retirement allowance past normal retirement age until the total amount paid prior to normal retirement age equals the difference between the minimum retirement allowance and the retirement allowance that would have been paid to the member under Section 24202 or 24203, whichever is applicable, at normal retirement age, and thereafter the service retirement allowance for normal retirement age shall be paid. The board shall determine the age past normal retirement at which the increase will be made by determining how long the minimum retirement allowance would have to be paid beyond age 60 years in order for the amount paid prior to age 60 years to equal the difference between the minimum retirement allowance and the allowance that would have been paid to the member under service retirement at normal retirement age. The board shall integrate the early retirement alternative adopted under this section with the other early retirement alternatives that a member may elect under this chapter.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(c) The additional employer contributions required, if any, under this section shall be computed as a level percentage of creditable compensation. The additional contribution rate required, if any, shall not be less than the sum of (1) the actuarial normal cost, plus (2) the additional contribution required to amortize the increase in accrued

liability attributable to benefits elected under this section over a period of not more than 30 years from January 1, 1979.

SEC. 28. Section 24950 of the Education Code is amended to read:

24950. An annuity contract and custodial account as described in Section 403(b) of the Internal Revenue Code of 1986 shall be offered to all employees of any state agency who are members of the plan or any employee of a local public agency or political subdivision of this state that employs persons to perform creditable service subject to coverage by the plan. The following criteria shall apply to that annuity contract and custodial account:

(a) The annuity contract and custodial account shall be offered for at least five years.

(b) The annuity contract and custodial account may be administered by a qualified third-party administrator that shall, under agreement with the system, provide custodial, investment, recordkeeping, or administrative services, or any combination thereof. The third-party administrator shall not provide investment options.

(c) The investment options offered shall be determined by the board consistent with those annuity contract and custodial accounts described in Section 403(b) of the Internal Revenue Code of 1986.

(d) The system's investment staff shall make recommendations to the board as to the appropriate investment options. At a minimum, the board shall offer at least three investment options. The board shall have sole responsibility for the selection of service providers.

(e) All contributions made in accordance with the provisions of Section 403(b) of the Internal Revenue Code of 1986 and this section shall be remitted directly to the administrator and held by the administrator in a custodial account on behalf of the employee. Any investment gains or losses shall be credited to those accounts. The forms of payment and disbursement procedure shall be consistent with those generally offered by similar annuity contracts and custodial accounts and applicable federal and state statutes governing those contracts and accounts.

(f) Any employer, other than the state, may elect to make contributions to the employee's annuity contract and custodial account on behalf of the employee. The employer shall take whatever action is necessary to implement this section, including the adoption of an annuity contract and custodial account, or provide the appropriate authorization in accordance with the provision of Section 403(b) of the Internal Revenue Code of 1986. Employer contributions made under this section are excluded from the definition of creditable compensation as provided in Section 22119.2.

(g) The design and administration of the annuity contract and custodial account shall comply with the applicable provisions of the

Internal Revenue Code of 1986 and the Revenue and Taxation Code. Section 770.3 of the Insurance Code shall not be applicable.

CHAPTER 483

An act to amend Sections 12824 and 12825 of the Food and Agricultural Code, relating to pesticides.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 12824 of the Food and Agricultural Code is amended to read:

12824. The director shall endeavor to eliminate from use in the state any pesticide that endangers the agricultural or nonagricultural environment, is not beneficial for the purposes for which it is sold, or is misrepresented. In carrying out this responsibility, the director shall develop an orderly program for the continuous evaluation of all pesticides actually registered.

Before a substance is registered as a pesticide for the first time, there shall be a thorough and timely evaluation in accordance with this section. Appropriate restrictions may be placed upon its use including, but not limited to, limitations on quantity, area, and manner of application. All pesticides for which renewal of registration is sought also shall be evaluated in accordance with this section.

The director may establish specific criteria to evaluate a pesticide with regard to the factors listed in Section 12825. The department may establish performance standards and tests that are to be conducted or financed, or both conducted and financed, by the registrants, applicants for registration, or parties interested in the registration of those pesticides.

SEC. 2. Section 12825 of the Food and Agricultural Code is amended to read:

12825. Pursuant to Section 12824, the director, after hearing, may cancel the registration of, or refuse to register, any pesticide:

(a) That has demonstrated serious uncontrollable adverse effects either within or outside the agricultural environment.

(b) The use of which is of less public value or greater detriment to the environment than the benefit received by its use.

(c) For which there is a reasonable, effective, and practicable alternate material or procedure that is demonstrably less destructive to the environment.

(d) That, when properly used, is detrimental to vegetation, except weeds, to domestic animals, or to the public health and safety.

(e) That is of little or no value for the purpose for which it is intended.

(f) Concerning which any false or misleading statement is made or implied by the registrant or his or her agent, either verbally or in writing, or in the form of any advertising literature.

(g) For which the director determines the registrant has failed to report an adverse effect or risk as required by Section 12825.5.

(h) If the director determines that the registrant has failed to comply with the requirements of a reevaluation or to submit the data required as part of the reevaluation of the registrant's product.

(i) That is required to be registered pursuant to the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.) and that is not so registered.

In making a determination pursuant to this section, the director may require those practical demonstrations that are necessary to determine the facts.

CHAPTER 484

An act to amend Sections 5604, 5712, 17604.05, 17605, 17605.10, 17606.05, 17606.10, 17606.15, and 17608.10 of the Welfare and Institutions Code, relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 5604 of the Welfare and Institutions Code is amended to read:

5604. (a) (1) Each community mental health service shall have a mental health board consisting of 10 to 15 members, depending on the preference of the county, appointed by the governing body, except that boards in counties with a population of less than 80,000 may have a minimum of five members. One member of the board shall be a member of the local governing body. Any county with more than five supervisors shall have at least the same number of members as the size of its board of supervisors. Nothing in this section shall be construed to limit the ability of the governing body to increase the number of members above 15. Local mental health boards may recommend appointees to the county supervisors. Counties are encouraged to appoint individuals who have experience and knowledge of the mental health system. The board membership should reflect the ethnic diversity of the client population in the county.

(2) Fifty percent of the board membership shall be consumers or the parents, spouses, siblings, or adult children of consumers, who are receiving or have received mental health services. At least 20 percent of the total membership shall be consumers, and at least 20 percent shall be families of consumers.

(3) (A) In counties under 80,000 population, at least one member shall be a consumer, and at least one member shall be a parent, spouse, sibling, or adult child of a consumer, who is receiving, or has received, mental health services.

(B) Notwithstanding subparagraph (A), a board in a county with a population under 80,000 that elects to have the board exceed the five-member minimum permitted under paragraph (1) shall be required to comply with paragraph (2).

(b) The term of each member of the board shall be for three years. The governing body shall equitably stagger the appointments so that approximately one-third of the appointments expire in each year.

(c) If two or more local agencies jointly establish a community mental health service under Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the mental health board for the community mental health service shall consist of an additional two members for each additional agency, one of whom shall be a consumer or a parent, spouse, sibling, or adult child of a consumer who has received mental health services.

(d) No member of the board or his or her spouse shall be a full-time or part-time county employee of a county mental health service, an employee of the State Department of Mental Health, or an employee of, or a paid member of the governing body of, a mental health contract agency.

(e) Members of the board shall abstain from voting on any issue in which the member has a financial interest as defined in Section 87103 of the Government Code.

(f) If it is not possible to secure membership as specified from among persons who reside in the county, the governing body may substitute representatives of the public interest in mental health who are not full-time or part-time employees of the county mental health service, the State Department of Mental Health, or on the staff of, or a paid member of the governing body of, a mental health contract agency.

(g) The mental health board may be established as an advisory board or a commission, depending on the preference of the county.

SEC. 2. Section 5712 of the Welfare and Institutions Code is amended to read:

5712. The department shall contract with counties for the funds appropriated to, and allocated by, the department pursuant to paragraph (2) of subdivision (a) of Section 5700 in accordance with the following:

(a) The net cost of all services specified in the contract between the counties and the department shall be financed on a basis of 90

percent state funds and 10 percent county funds except for services to be financed from other public or private sources as indicated in the contracts.

(b) The cost requirement for local financial participation pursuant to this section shall be waived for all counties with a population of 125,000 or less based on the most recent available estimates of population data as determined by the Population Research Unit of the Department of Finance.

(c) The cost requirements for local financial participation pursuant to this section shall be waived for funds provided pursuant to Part 2.5 (commencing with Section 5775).

SEC. 2.5. Section 17604.05 of the Welfare and Institutions Code is amended to read:

17604.05. (a) With the exception of the deposits made into the Vehicle License Collection Account, upon request of a county, the Controller may deposit all or any portion of the county's allocation under this article into the County Medical Services Program Account of the County Health Services Fund.

(b) Deposits made pursuant to subdivision (a) shall be deemed to be deposits into a county's or city's local health and welfare trust fund pursuant to Section 17608.10.

SEC. 3. Section 17605 of the Welfare and Institutions Code is amended to read:

17605. (a) For the 1992–93 fiscal year, the Controller shall deposit into the Caseload Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, from revenues deposited into the Sales Tax Growth Account, an amount to be determined by the Department of Finance, that represents the sum of the shortfalls between the actual realignment revenues received by each county and each city and county from the Social Services Subaccount of the Local Revenue Fund in the 1991–92 fiscal year and the net costs incurred by each of those counties and cities and counties in the fiscal year for the programs described in Sections 10101, 10101.1, 11322, 11322.2, 12306, subdivisions (a), (b), (c), and (d) of Section 15200, and Sections 15204.2 and 18906.5. The Department of Finance shall provide the Controller with an allocation schedule on or before August 15, 1993, that shall be used by the Controller to allocate funds deposited to the Caseload Subaccount under this subdivision. The Controller shall allocate these funds no later than August 27, 1993.

(b) (1) For the 1993–94 fiscal year and fiscal years thereafter, the Controller shall deposit into the Caseload Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, from revenues deposited into the Sales Tax Growth Account, an amount determined by the Department of Finance, in consultation with the appropriate state departments and the California State Association of Counties, that is sufficient to fund the net cost for the realigned portion of the county or city and county share of growth in social services caseloads, as specified in paragraph (2), and any share of growth from the

previous year or years for which sufficient revenues were not available in the Caseload Subaccount. The Department of Finance shall provide the Controller with an allocations schedule on or before March 15 of each year. The schedule shall be used by the Controller to allocate funds deposited into the Caseload Subaccount under this subdivision.

(2) For purposes of this subdivision, "growth" means the increase in the actual caseload expenditures for the prior fiscal year over the actual caseload expenditures for the fiscal year preceding the prior fiscal year for the programs described in Section 12306, subdivisions (a), (b), (c), and (d) of Section 15200, and Sections 10101, 15204.2 and 18906.5 of this code, and subdivision (b) of Section 123940 of the Health and Safety Code.

(3) The difference in caseload expenditures between the fiscal years shall be multiplied by the factors that represent the change in county or city and county shares of the realigned programs. These products shall then be added or subtracted, taking into account whether the county's or city and county's share of costs was increased or decreased as a result of realignment, to yield each county's or city and county's allocation for caseload growth. Allocations for counties or cities and counties with allocations of less than zero shall be set at zero.

(c) On or before the 27th day of each month, the Controller shall allocate, to the local health and welfare trust fund social services account, the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Caseload Subaccount, pursuant to the schedule of allocations of caseload growth described in subdivision (b). If there are insufficient funds to fully satisfy all caseload growth obligations, each county's or city and county's allocation for each program specified in subdivision (d) shall be prorated.

(d) Prior to allocating funds pursuant to subdivision (b), to the extent that funds are available from funds deposited in the Caseload Subaccount in the Sales Tax Growth Account in the Local Revenue Fund, the Controller shall allocate money to counties or cities and counties to correct any inequity or inequities in the computation of the child welfare services portion of the schedule required by subdivision (a) of Section 17602.

(e) The Department of Finance shall submit to the Controller, by March 1, 1994, a schedule specifying the amount of the allocations described in subdivision (d). This schedule shall include, but need not be limited to, adjustments resulting from retirement system credits and other anomalies that occurred in the 1989–90 fiscal year and the 1990–91 fiscal year.

SEC. 4. Section 17605.10 of the Welfare and Institutions Code is amended to read:

17605.10. (a) For the 1992–93 fiscal year and fiscal years thereafter, after satisfying the obligations set forth in Sections 17605,

17605.05, 17605.07, and 17605.08, the Controller shall deposit any funds remaining in the Sales Tax Growth Account of the Local Revenue Fund into the specified subaccounts according to the following schedule:

Account	Allocation Percentage
The Indigent Health Equity Subaccount	4.9388
The Community Health Equity Subaccount	12.0937
The Mental Health Equity Subaccount	3.9081
The State Hospital Mental Health Equity Subaccount	6.9377
The General Growth Subaccount	64.0367
The Special Equity Subaccount	8.0850

(b) Notwithstanding subdivision (a), after amounts have been deposited into the Indigent Health Equity Subaccount, the Community Health Equity Subaccount, the Mental Health Equity Subaccount, and the State Hospital Mental Health Equity Subaccount, which in conjunction with matching funds pursuant to Section 17606.20, comprise a cumulative total of two hundred seven million nine hundred thousand dollars ($207,900,000), or after the requirements of paragraph (2) of subdivision (c) of Section 17606.05 have been satisfied, whichever is less, all additional funds that would be available for deposit into those subaccounts shall be deposited into any remaining subaccounts in proportion to their percentages in the schedule specified in subdivision (a).

(c) Notwithstanding subdivision (a), after amounts have been deposited into the Special Equity Subaccount, which in conjunction with matching funds pursuant to Section 17606.20, comprise a cumulative total of thirty-eight million five hundred thousand dollars ($38,500,000), all additional funds that would be available for deposit into that subaccount shall be deposited into the remaining subaccounts in proportion to their percentages specified in subdivision (a).

(d) Notwithstanding subdivision (a), cities shall not participate in the allocations from the State Hospital Mental Health Equity Subaccount and the Indigent Health Equity Subaccount. For purposes of calculating equity allocations among the counties and a city and county, the allocations of the Mental Health Equity Subaccount and the State Hospital Mental Health Equity Subaccount shall be combined by consolidating the resource bases associated with each subaccount as the basis of calculating the poverty-population shortfall. The population portion of the calculation of allocations of the Mental Health Equity Subaccount and the State Hospital Mental

Health Equity Subaccount shall be adjusted to ensure that cities receive an appropriate share of equity funds consistent with their operation of community programs, and the counties in which those cities are located receive an appropriate share reflecting the fact that counties provide the state hospital services in those counties.

SEC. 5. Section 17606.05 of the Welfare and Institutions Code is amended to read:

17606.05. (a) For the 1992–93 fiscal year, the Controller shall allocate to those counties that have a poverty-population shortfall, as described in subdivision (c), those funds deposited in the Indigent Health Equity Subaccount, the Community Health Equity Subaccount, the Mental Health Equity Subaccount, and the State Hospital Mental Health Equity Subaccount in accordance with the following tables and schedules:

(1) The Controller shall make monthly allocations from the amounts deposited in the Indigent Health Equity Subaccount to the health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Alameda	9.377
Contra Costa	4.939
Fresno	6.964
Kern	4.362
Merced	1.889
Monterey	2.143
Placer	.959
Riverside	7.059
Sacramento	8.907
San Bernardino	10.804
San Diego	15.927
San Joaquin	4.855
San Luis Obispo	1.200
San Mateo	3.159
Santa Barbara	3.159
Santa Clara	3.159
Stanislaus	3.249
Tulare	3.262
Ventura	3.592
Yolo	1.038

(2) The Controller shall make monthly allocations from the amounts deposited in the Community Health Equity Subaccount to

the health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Butte	1.11
Calaveras	.13
Del Norte	.18
El Dorado	.54
Fresno	7.20
Glenn	.12
Humboldt	.71
Imperial	.72
Kern	4.81
Kings	.62
Lake	.35
Lassen	.15
Madera	.43
Marin	.84
Mariposa	.07
Mendocino	.54
Merced	1.53
Modoc	.05
Napa	.50
Nevada	.40
Placer	.63
Plumas	.12
Riverside	7.66
Sacramento	8.01
San Benito	.15
San Bernardino	11.76
San Diego	17.07
San Joaquin	3.91
San Luis Obispo	1.09
Santa Clara	13.88
Shasta	1.09
Sierra	.02
Siskiyou	.25
Solano	1.25
Sonoma	1.83
Stanislaus	2.90

Sutter	.67
Tehama	.29
Tulare	2.03
Tuolumne	.22
Ventura	3.34
Yolo	.84
City of Berkeley	—
City of Pasadena	—
City of Long Beach	—

(3) The Controller shall make monthly allocations from the amounts deposited in the State Hospital Mental Health Equity Subaccount to the mental health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Amador	.055
Butte	1.957
Calaveras	.256
Del Norte	.291
El Dorado	1.011
Fresno	10.815
Glenn	.277
Humboldt	.747
Imperial	1.682
Kern	1.726
Kings	1.153
Lake	.470
Lassen	.150
Madera	1.192
Mariposa	.006
Mendocino	.478
Merced	2.924
Modoc	.007
Monterey	.684
Nevada	.021
Placer	.450
Plumas	.068
Riverside	5.538
Sacramento	9.423

San Benito	.010
San Bernardino	11.445
San Diego	19.331
San Joaquin	7.682
San Luis Obispo	1.119
Santa Barbara	.341
Santa Clara	5.264
Santa Cruz	.271
Shasta	.708
Siskiyou	.529
Stanislaus	3.309
Sutter	1.702
Tehama	.194
Trinity	.054
Tulare	5.074
Tuolumne	.104
Ventura	1.377
Yolo	.105
City of Berkeley	—

(4) The Controller shall make monthly allocations from the amounts deposited in the Mental Health Equity Subaccount to the mental health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Butte	.379
Contra Costa	6.066
Fresno	7.113
Imperial	.711
Kern	5.387
Lake	.490
Lassen	.045
Los Angeles	28.142
Madera	.335
Merced	1.955
Napa	.046
Orange	2.794
Riverside	6.448
Sacramento	3.710

San Benito	.231
San Bernardino	19.414
Santa Cruz	2.171
Shasta	1.909
Solano	5.117
Stanislaus	3.717
Tulare	3.604
Tuolumne	.217
City of Berkeley	—

(b) (1) For the 1993–94 fiscal year and succeeding fiscal years, the Controller shall allocate, on a monthly basis, to the appropriate accounts of the local health and welfare trust fund those funds deposited into the Indigent Health Equity Subaccount, the Community Health Equity Subaccount, the Mental Health Equity Subaccount, and the State Hospital Mental Health Equity Subaccount in the Sales Tax Growth Account in accordance with a schedule prepared in accordance with subdivision (c) by the Department of Finance.

(2) The Department of Finance shall annually consult with the California State Association of Counties prior to submitting any schedule of allocations to the Controller.

(3) If deposits into the Indigent Health Equity Subaccount, the Community Health Equity Subaccount, the Mental Health Equity Subaccount, and the State Hospital Mental Health Equity Subaccount are not sufficient to eliminate poverty-population shortfalls as described in subdivision (c), each eligible jurisdiction shall receive an allocation which equals its pro rata share of funds in the subaccount based on the jurisdiction's percentage share of the poverty-population shortfall.

(c) (1) A poverty-population percentage shall be computed annually by the Department of Finance for each county, city, and city and county by averaging each jurisdiction's share of the state's total population and each jurisdiction's percentage share of the state's total cash-grant certified AFDC and SSI/SSP eligible populations residing in the county, city, or city and county, as determined by the Department of Finance. For purposes of calculating the poverty-population percentage for the State Hospital Mental Health Equity Subaccount and the Indigent Health Equity Subaccount, beginning with the 1995–96 allocation, the population and poverty figures for the cities shall be assigned to the county in which each city is located.

(2) (A) For each subaccount, the Department of Finance shall calculate the poverty-population shortfall for each county, city, and city or county, which received funding from the state, including any equity allocation made pursuant to this section, in the prior fiscal year

and excluding any transfers to or from other subaccounts under Section 17600.20.

(B) The poverty-population shortfalls shall be calculated for the following programs or funding sources:

(i) State funding under Part 4.5 (commencing with Section 16700), as operative on June 29, 1991, for indigent health programs.

(ii) State funding under Part 4.5 (commencing with Section 16700), as operative on June 29, 1991, for community health programs.

(iii) Funding provided for purposes of the implementation of Division 5 (commencing with Section 5000) for the organization and financing of community mental health programs, including funding for the purchase of state hospital services, funding for services provided by institutes for mental diseases, and funding for services provided for under Chapter 1294 of the Statutes of 1989.

(C) The calculation shall identify the amount by which the allocations for the programs or funding sources identified in subparagraph (B) are less than the amount the jurisdiction would have received if its percentage share of the prior year funding had been equal to its poverty-population percentage.

(D) The calculation of the poverty-population shortfall for clause (iii) of subparagraph (B) shall include all allocations received pursuant to Section 5701, including all distributions made pursuant to subdivision (b) of Section 5701, unless those funds are intended for pilot program or demonstration projects or are exempted from this requirement by other provisions of law. Poverty-population shortfall calculations shall not include funds received through the state mandate claim process.

(E) (i) The Department of Finance shall recalculate the resource base used in determining the poverty-population shortfalls pursuant to subparagraph (B) for the 1994–95 fiscal year equity allocations according to this subparagraph. The resource base for each equity subaccount shall be reconstructed beginning with the resource bases to be used for allocating 1994–95 fiscal year growth.

(ii) For the State Hospital Mental Health Equity Subaccount, the Department of Finance shall use the 1990–91 fiscal year State Hospital Mental Health allocations as reported by the State Department of Mental Health.

(iii) For the Community Mental Health Equity Subaccount:

(I) The Department of Finance shall use the following resources reported by the State Department of Mental Health:

(A) The final December 1992 distribution of resources associated with Institutes of Mental Disease.

(B) The 1990–91 fiscal year community mental health allocations.

(C) Allocations for services provided for under Chapter 1294 of the Statutes of 1989.

(II) The Department of Finance shall expand the resource base with the following nonrealigned funding sources, as allocated among counties:

(A) 1991–92 fiscal year Cigarette and Tobacco Products Surtax allocations made under Chapter 1331 of the Statutes of 1989, Chapter 51 of the Statutes of 1990, and, for the 1994–95 fiscal year only, Chapter 1323 of the Statutes of 1990.

(B) 1993–94 fiscal year federal homeless block grant allocations.

(C) 1993–94 fiscal year mental health special education allocations.

(D) 1993–94 fiscal year allocations for the system of care for children, in accordance with Chapter 1229 of the Statutes of 1992.

(E) 1993–94 fiscal year federal Substance Abuse and Mental Health Services Administration block grant funds.

(iv) For the Community Health Equity Subaccount and the Indigent Health Equity Subaccount, the Department of Finance shall use the historical resource base as allocated among the counties, cities, and city and county, as reported by the State Department of Health Services in the September 17, 1991, report of Indigent and Community Health Resources.

(v) The Department of Finance shall use these adjusted resource bases for the four equity subaccounts as provided in this subparagraph to calculate what the four 1994–95 fiscal year equity subaccount allocations would have been, and, together with 1994–95 fiscal year Base Restoration Subaccount allocations as adjusted according to subdivision (b) of Section 17605, to the Health and Mental Health Accounts, reconstruct the 1994–95 fiscal year realignment base for the 1995–96 allocation year for each city, county, and city and county for each equity subaccount. The Department of Finance shall use these adjusted resource bases to do both of the following:

(A) Distribute equity allocations for the 1995–96 fiscal year.

(B) With adjustments for growth in realigned funds, and annual changes that reflect funds allocated in the previous year from nonrealigned funds specified in this subdivision, calculate equity allocations in the 1996–97 fiscal year and fiscal years thereafter.

(3) For each subaccount, the Department of Finance shall total the amounts calculated in paragraph (2) and determine the percentage of that total represented by each amount.

(4) Each county's, city's, or city and county's percentage share of each subaccount specified in subdivision (b) of Section 17606.05 shall equal the percentage computed in paragraph (3).

(5) All calculations made pursuant to this subdivision shall be compiled and made available by the Department of Finance, upon request, to all counties, cities, and cities and counties eligible for funding pursuant to this subdivision, and cities and counties, receiving funding pursuant to this article at least 30 days prior to submission of schedules of allocations to the Controller.

SEC. 6. Section 17606.10 of the Welfare and Institutions Code is amended to read:

17606.10. (a) For the 1992–93 fiscal year and subsequent fiscal years, the Controller shall allocate funds, on a monthly basis from the General Growth Subaccount in the Sales Tax Growth Account to the appropriate accounts in the local health and welfare trust fund of each county, city, and city and county in accordance with a schedule setting forth the percentage of total state resources received in the 1990–91 fiscal year, including State Legalization Impact Assistance Grants distributed by the state under Part 4.5 (commencing with Section 16700), funding provided for purposes of implementation of Division 5 (commencing with Section 5000), for the organization and financing of community mental health services, including the Cigarette and Tobacco Products Surtax proceeds which are allocated to county mental health programs pursuant to Chapter 1331 of the Statutes of 1989, Chapter 51 of the Statutes of 1990, and Chapter 1323 of the Statutes of 1990, and state hospital funding and funding distributed for programs administered under Sections 1794, 10101.1, and 11322.2, as annually adjusted by the Department of Finance, in conjunction with the appropriate state department to reflect changes in equity status from the base percentages. However, for the 1992–93 fiscal year, the allocation for community mental health services shall be based on the following schedule:

Jurisdiction	Percentage of Statewide Resource Base
Alameda	4.3693
Alpine	0.0128
Amador	0.0941
Butte	0.7797
Calaveras	0.1157
Colusa	0.0847
Contra Costa	2.3115
Del Norte	0.1237
El Dorado	0.3966
Fresno	3.1419
Glenn	0.1304
Humboldt	0.6175
Imperial	0.5425
Inyo	0.1217
Kern	1.8574
Kings	0.4229
Lake	0.2362

Lassen	0.1183
Los Angeles	27.9666
Madera	0.3552
Marin	0.9180
Mariposa	0.0792
Mendocino	0.4099
Merced	0.8831
Modoc	0.0561
Mono	0.0511
Monterey	1.1663
Napa	0.3856
Nevada	0.2129
Orange	5.3423
Placer	0.5034
Plumas	0.1134
Riverside	3.6179
Sacramento	4.1872
San Benito	0.1010
San Bernardino	4.5494
San Diego	7.8773
San Francisco	3.5335
San Joaquin	2.4690
San Luis Obispo	0.6652
San Mateo	2.5169
Santa Barbara	1.0745
Santa Clara	5.0488
Santa Cruz	0.7960
Shasta	0.5493
Sierra	0.0345
Siskiyou	0.2051
Solano	0.6694
Sonoma	1.1486
Stanislaus	1.4701
Sutter/Yuba	0.6294
Tehama	0.2384
Trinity	0.0826
Tulare	1.4704
Tuolumne	0.1666
Ventura	1.9311
Yolo	0.5443

Berkeley	0.2688
Tri−City	0.2347

(b) The Department of Finance shall recalculate the resource base used in determining the General Growth Subaccount allocations to the Health Account, Mental Health Account, and Social Services Account of the local health and welfare trust fund of each city, county, and city and county for the 1994–95 fiscal year general growth allocations according to subdivisions (c) and (d). For the 1995–96 fiscal year and annually thereafter, the Department of Finance shall prepare the schedule of allocations of growth based upon the recalculation of the resource base as provided by subdivision (c).

(c) For the Mental Health Account, the Department of Finance shall do all of the following:

(1) Use the following sources as reported by the State Department of Mental Health:

(A) The final December 1992 distribution of resources associated with Institutes for Mental Disease.

(B) The 1990–91 fiscal year state hospitals and community mental health allocations.

(C) Allocations for services provided for under Chapter 1294 of the Statutes of 1989.

(2) Expand the resource base with the following nonrealigned funding sources as allocated among the counties:

(A) Tobacco surtax allocations made under Chapter 1331 of the Statutes of 1989 and Chapter 51 of the Statutes of 1990.

(B) For the 1994–95 allocation year only, Chapter 1323 of the Statutes of 1990.

(C) 1993–94 fiscal year federal homeless block grant allocation.

(D) 1993–94 fiscal year Mental Health Special Education allocations.

(E) 1993–94 fiscal year allocations for the system of care for children, in accordance with Chapter 1229 of the Statutes of 1992.

(F) 1993–94 fiscal year federal Substance Abuse and Mental Health Services Administration block grant allocations pursuant to Subchapter 1 (commencing with Section 10801) of Chapter 114 of Title 42 of the United States Code.

(d) For the Health Account, the Department of Finance shall use the historical resource base of state funds as allocated among the counties, cities, and city and county as reported by the State Department of Health Services in a September 17, 1991, report of Indigent and Community Health Resources.

(e) The Department of Finance shall use these adjusted resource bases for the Health Account and Mental Health Account to calculate what the 1994–95 fiscal year General Growth Subaccount allocations would have been, and together with 1994–95 fiscal year Base Restoration Subaccount allocations, CMSP subaccount allocations,

equity allocations to the Health Account and Mental Health Account as adjusted by subparagraph (E) of paragraph (2) of subdivision (c) of Section 17606.05, and special equity allocations to the Health Account and Mental Health Account as adjusted by subdivision (e) of Section 17606.15 reconstruct the 1994–95 fiscal year General Growth Subaccount resource base for the 1995–96 allocation year for each county, city, and city and county. Notwithstanding any other provision of law, the actual 1994–95 general growth allocations shall not become part of the realignment base allocations to each county, city, and city and county. The total amounts distributed by the Controller for general growth for the 1994–95 allocation year shall be reallocated among the counties, cities, and city and county in the 1995–96 allocation year according to this paragraph, and shall be included in the general growth resource base for the 1996–97 allocation year and each fiscal year thereafter. For the 1996–97 allocation year and fiscal years thereafter, the Department of Finance shall update the base with actual growth allocations to the Health Account, Mental Health Account, and Social Services Account of each county, city, and city and county local health and welfare trust fund in the prior year, and adjust for actual changes in nonrealigned funds specified in subdivision (c) in the year prior to the allocation year.

SEC. 7. Section 17606.15 of the Welfare and Institutions Code is amended to read:

17606.15. (a) For the first fiscal year in which funds are deposited into the Special Equity Subaccount in the Sales Tax Growth Account in the Local Revenue Fund, the Controller shall allocate funds on a monthly basis from the Special Equity Subaccount to the account of the local health and welfare trust fund designated by each recipient county in accordance with the following schedule:

County	Allocation Percentage
Orange	49.505
San Diego	39.604
Santa Clara	10.891

(b) For the fiscal year following the first fiscal year in which funds are deposited into the Special Equity Subaccount, the Controller shall first allocate any amount deposited pursuant to Section 17605.08 in accordance with the schedule described in subdivision (a).

(c) For each fiscal year following the first fiscal year in which funds are deposited into the Special Equity Subaccount in the Sales Tax Growth Account in the Local Revenue Fund, after fulfilling the obligations set forth in subdivision (b), the Controller shall allocate all funds remaining in that subaccount to the account of the local

health and welfare trust fund designated by each recipient county in accordance with the following schedule:

County	Allocation Percentage
Orange	28.169
San Diego	56.338
Santa Clara	15.493

(d) Notwithstanding any other subdivision of this section, the Controller shall not allocate from the Special Equity Subaccount of the Sales Tax Growth Account in the Local Revenue Fund any amount that, in conjunction with matching funds allocated pursuant to Section 17606.20, comprises a cumulative total of more than the amounts in the following schedule:

County	Allocation
Orange	$13,000,000
San Diego	20,000,000
Santa Clara	5,500,000

(e) For purposes of calculating the poverty-population shortfall as required by subdivision (c) of Section 17606.05, counties receiving funds pursuant to this section shall inform the Department of Finance of the amount from each county's special equity allocation that has been deposited into the health subaccount of the health and welfare trust fund that shall be credited to the indigent health resource base and the community resource base.

SEC. 8. Section 17608.10 of the Welfare and Institutions Code is amended to read:

17608.10. (a) As a condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county's or city's local health and welfare trust fund account, a county or city shall deposit county or city general purpose revenues into the health account each month equal to one-twelfth of the amounts set forth in the following schedule:

Jurisdiction	Amount
Alameda	$ 20,545,579
Alpine	21,465
Amador	278,460
Butte	724,304
Calaveras	0
Colusa	237,754
Contra Costa	10,114,331

Del Norte	44,324
El Dorado	704,192
Fresno	10,404,113
Glenn	58,501
Humboldt	589,711
Imperial	772,088
Inyo	561,262
Kern	7,623,407
Kings	466,273
Lake	118,222
Lassen	119,938
Los Angeles	159,324,707
Madera	81,788
Marin	1,196,515
Mariposa	0
Mendocino	347,945
Merced	858,484
Modoc	70,462
Mono	409,928
Monterey	3,367,970
Napa	546,957
Nevada	96,375
Orange	15,727,317
Placer	368,490
Plumas	66,295
Riverside	7,365,244
Sacramento	7,128,508
San Benito	0
San Bernardino	4,316,679
San Diego	4,403,290
San Francisco	39,363,076
San Joaquin	2,469,934
San Luis Obispo	1,359,837
San Mateo	6,786,043
Santa Barbara	3,794,166
Santa Clara	13,203,375
Santa Cruz	2,053,729
Shasta	184,049
Sierra	7,330
Siskiyou	287,627

Solano	115,800
Sonoma	438,234
Stanislaus	3,510,803
Sutter	674,240
Tehama	446,992
Trinity	292,662
Tulare	1,547,481
Tuolumne	305,830
Ventura	4,185,070
Yolo	1,081,388
Yuba	187,701
Berkeley	1,953,018
Long Beach	0
Pasadena	0

(b) As an additional condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county's or city's local health and welfare trust fund, a county or city shall deposit each month an amount of county or city general purpose revenues at least equal to the amount of funds transferred by the Controller each month to the county or city pursuant to Article 5 (commencing with Section 17604).

(c) As an additional condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county's or city's local health and welfare trust fund account, a county or city shall deposit each month into the mental health account of the local health and welfare trust fund account an amount of county or city general purpose revenues at least equal to the amount of funds transferred pursuant to subdivision (d) of Section 17604 to the county.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to timely implement the provisions of this act with respect to the fiscal years affected by this act, it is necessary that this act take effect immediately.

CHAPTER 485

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

[Approved by Governor September 24, 1997. Filed with
Secretary of State September 25, 1997.]

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

SECTION 1. This act may be cited as the Second Validating Act of 1997.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

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

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.

Conservancy districts.

Cotton pest abatement districts.

County boards of education.

County drainage districts.

County flood control and water districts.

County free library systems.

County maintenance districts.

County sanitation districts.

County service areas.

County transportation commissions.

County water agencies.

County water authorities.

County water districts.

County waterworks districts.

Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Distribution districts of any public body.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.

Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

(b) "Bonds" means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes,

revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

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

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

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

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

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

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

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

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid,

and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

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

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

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

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

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

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

CHAPTER 486

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. This act may be cited as the Third Validating Act of 1997.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

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

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.
Community development commissions.
Community facilities districts.
Community redevelopment agencies.
Community rehabilitation districts.
Community services districts.
Conservancy districts.
Cotton pest abatement districts.
County boards of education.
County drainage districts.
County flood control and water districts.
County free library systems.
County maintenance districts.
County sanitation districts.
County service areas.
County transportation commissions.
County water agencies.
County water authorities.
County water districts.
County waterworks districts.
Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Distribution districts of any public body.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.

Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.

Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

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

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

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

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

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

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

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

body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

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

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

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

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

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act, and shall

not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

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

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

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

CHAPTER 487

An act to amend Sections 6351, 6352, and 6353 of, and to add Section 6354.1 to, the Public Utilities Code, relating to energy transporters.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 6351 of the Public Utilities Code is amended to read:

6351. As used in this chapter:

(a) "Municipality" includes counties.

(b) "Energy transporter" means and includes every utility and nonutility owner or operator, or both, of a natural gas or electric transmission or distribution system, or both, subject to a franchise agreement executed pursuant to this division, provided that proprietary gas pipelines whose franchise fees are set forth in Article

2 (commencing with Section 6231) of Chapter 2 shall not be covered by this chapter.

(c) "Transportation customer" means every person, firm, or corporation, other than the State of California or a political subdivision thereof, transporting gas or electricity on an energy transporter's transmission or distribution system, or both, when the gas or electricity was purchased by the transportation customer from a third party. Transportation customer shall not include one gas utility transporting gas, for end use in its commission designated service area through another gas utility's service area, nor shall transportation customer include a utility transporting its own gas through its own gas transmission or distribution system, or both, for purposes of generating electricity or for use in its own operations. In addition, "transportation customer" shall not include a cogeneration or nonutility generation facility when the facility transports electricity through its own electric transmission or distribution system or otherwise delivers electricity in the manner described in Section 218.

(d) "Surcharge" means a municipal surcharge for the use of public lands by a transportation customer as defined in subdivision (c).

SEC. 2. Section 6352 of the Public Utilities Code is amended to read:

6352. (a) Notwithstanding any other provision of law, a transportation customer who receives transportation service on a natural gas or electric transmission or distribution system, or both, subject to a franchise agreement executed pursuant to this division from an energy transporter shall be subject to a surcharge as defined in Section 6353. Notwithstanding any other provision of this chapter, no county shall impose a surcharge pursuant to this chapter in an incorporated area.

(b) Notwithstanding subdivision (a), the surcharge assessed for gas used to generate electricity by a nonutility facility shall be the same as the surcharge assessed for gas used to generate electricity by the electric utility for that quantity of gas described in Section 454.4. The surcharge amount for electricity shall not apply to the sale of electricity from a cogeneration or nonutility facility to an entity for resale to a retail customer.

(c) Nothing in this chapter permits a municipality to recover surcharges imposed pursuant to this chapter on the commodity cost of gas or electricity transported for transportation customers in addition to franchise fees calculated on the imputed value of the same quantities of gas or electricity. If a municipality has a franchise agreement with an energy transporter that requires the energy transporter to pay a franchise fee based upon an imputed value for the commodity cost of gas or electricity transported but not sold by the energy transporter, the energy transporter may apply the surcharge imposed by this chapter toward the amount of the franchise fee due under the franchise agreement.

(d) Nothing in this chapter shall in any way affect the rights of the parties to existing franchise agreements executed pursuant to this division that are in force on the effective date of this chapter.

(e) Notwithstanding subdivision (a), the surcharge shall not apply to corporations transporting natural gas pursuant to a "gas transportation only" agreement in effect prior to January 1, 1986.

(f) Notwithstanding subdivision (a), an energy transporter of gas that is required to obtain a franchise agreement with a municipality, and that is subject to the jurisdiction of the Federal Energy Regulatory Commission, shall not be required to collect the surcharge imposed by this chapter, but shall be required to negotiate with the municipality under the provisions of this division, franchise fees that recover amounts equivalent to those amounts that would otherwise have been recovered pursuant to this chapter.

SEC. 3. Section 6353 of the Public Utilities Code is amended to read:

6353. For purpose of calculating the surcharge required in Section 6352, the energy transporter shall do the following:

(a) For each transportation customer, determine the volume of transported gas or electricity, in therms or kilowatthours respectively, subject to the surcharge.

(b) Determine the weighted average cost of the energy transporter's gas or electricity. For gas, the energy transporter shall use its tariffed core subscription weighted average cost of gas (WACOG) exclusive of any California sourced franchise fee factor. For electricity, the energy transporter shall use that portion of the otherwise applicable utility rate or charge which, pursuant to commissioner order, is removed from the bill of a retail electric customer who has elected direct access to reflect the fact that the customer is purchasing energy from a nonutility provider exclusive of any California sourced franchise fee factor. For an energy transporter that does not provide gas or electricity at a commission tariffed rate, the energy transporter shall use the equivalent tariffed rate of the commission regulated energy transporter operating in the same service area.

(c) Determine a product for each transportation customer by multiplying the volume determined pursuant to subdivision (a) by the weighted average cost determined pursuant to subdivision (b).

(d) Determine the surcharge applicable to each transportation customer by multiplying the product determined pursuant to subdivision (c) by the sum of the franchise fee factor plus any franchise fee surcharge authorized for the energy transporter as approved by the commission in the energy transporter's most recent proceeding in which those factors and surcharges were set. Energy transporters not regulated by the commission shall multiply the product determined in subdivision (c) by the franchise fee rate contained in their individual franchise agreements in effect in each municipality.

(e) The surcharge assessed pursuant to this chapter applies only to the end use point.

SEC. 4. Section 6354.1 is added to the Public Utilities Code, to read:

6354.1. As an alternative to the requirements of subdivision (h) of Section 6354, an energy transporter may elect to state on each customer's bill, including both transportation customers and customers receiving bundled services, the amount of that bill which is attributable to local franchise fee charges.

CHAPTER 488

An act to amend Section 14571.4 of the Public Resources Code, relating to beverage containers.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 14571.4 of the Public Resources Code is amended to read:

14571.4. (a) (1) The department shall certify one operator to establish the Pacific Beach Mobile Recycling Program that incorporates all convenience zones in the Pacific Beach area of San Diego County.

(2) For the purposes of this section, "the Pacific Beach area of San Diego County" means the area designated in the Pacific Beach Community Plan.

(b) Notwithstanding Sections 14570 and 14571, all convenience zones within the Pacific Beach area of San Diego County shall be considered served if both of the following conditions are met:

(1) The recycling center operator meets all of the following conditions:

(A) The center is open for business at least once each week at a number of locations equal to the number of convenience zones in the Pacific Beach area of San Diego County as determined by the department annually, three of which are within existing convenience zones in the Pacific Beach area of San Diego County.

(B) The center is open for business at least eight hours per day at each location.

(C) The center agrees to accept, and pay the refund value for, all eligible beverage container types.

(D) The center is certified by the department for operation in the number of locations equal to the number of convenience zones in the Pacific Beach area of San Diego County, as determined by the department.

(2) All dealers within the Pacific Beach area of San Diego County post a clear and conspicuous sign of at least 10 inches by 15 inches at each public entrance to the dealer's place of business, indicating the location, hours, and day of operation for each recycling location within the Pacific Beach area.

(c) A recycling center operator approved by the department, that meets the conditions prescribed in paragraphs (1) and (2) of subdivision (b), shall be designated a certified recycling center and shall be eligible to apply for handling fees pursuant to Section 14585 and to receive from processors the amounts specified in subdivision (a) of Section 14573.5 for refund values, administrative costs, and processing payments.

(d) If the department determines that it is necessary to adopt or revise regulations to implement this section, the regulations shall be adopted or revised as emergency regulations. The Office of Administrative Law shall consider these emergency regulations to be necessary for the immediate preservation of the public peace, health, and safety, and the general welfare for the purposes of Section 11349.6 of the Government Code. Notwithstanding the 120-day period provided for in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations shall be repealed 180 days from the effective date of the regulations.

CHAPTER 489

An act to amend Sections 25332, 25843, 26220, 50274, and 56706 of, to amend and renumber Section 25526.6 of, and to repeal Chapter 3.5 (commencing with Section 55530) of Part 2 of Division 2 of Title 5 of, the Government Code to amend Sections 32, 150, and 153 of, and to add Sections 156 and 157 to, the Fairfield-Suisun Sewer District Act (Chapter 303 of the Statutes of 1951), to amend Sections 3 and 6 of the Vallejo Sanitation and Flood Control District Act (Chapter 17 of the Statutes of 1952, First Extraordinary Session), and to amend Section 201 of the Colusa Basin Drainage District Act (Chapter 1399 of the Statutes of 1987), relating to the Local Government Omnibus Act of 1997.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. This act shall be known and may be cited as the Local Government Omnibus Act of 1997. The Legislature finds and declares that Californians desire their governments to be run efficiently and economically, and that public officials should avoid waste and duplication whenever possible. The Legislature further

finds and declares that it desires to reduce its own operating costs by reducing the number of separate bills affecting related topics. Therefore, in enacting this act, it is the intent of the Legislature to combine several minor, noncontroversial statutory changes relating to public agencies into a single measure.

SEC. 2. Section 25332 of the Government Code is amended to read:

25332. (a) The Boards of Supervisors of Butte, Los Angeles, Merced, Orange, Riverside, San Bernardino, Santa Clara, and Ventura Counties may enter into contracts with private enterprise to provide services that require special experience, education, and training that the county possesses. In addition, the Boards of Supervisors of Butte, Los Angeles, Merced, Orange, Riverside, San Bernardino, Santa Clara, and Ventura Counties may charge a fee for these optional services and enhanced services provided to the public that require special experience, education, training, or facilities that the county possesses.

These services shall be limited to the production and dissemination of training materials, leasing of training facilities, or provision of training or consulting services resulting from the special or unique experiences derived from the magnitude, diversity, or distinctive nature of the county's services such as law enforcement, fire protection, public health care, welfare and public social programs, and public works projects, and the acquisition and management of real and personal property.

(b) Prior to entering into a contract pursuant to this section, the board of supervisors shall find, based on evidence in record, that the provision of the special service described in the proposed contract will not adversely impact the provision of similar services by private sector companies or individuals within the county.

(c) This section shall be operative on January 1, 1997.

SEC. 3. Section 25526.6 of the Government Code, as added by Chapter 482 of the Statutes of 1995, is amended and renumbered to read:

25526.7. Whenever the board of supervisors of a county containing a population of 6,000,000 or more determines that any real property or interest therein belonging to the county is no longer necessary for county or other public purposes, and its estimated sales price does not exceed one hundred thousand dollars ($100,000), the county may sell, exchange, quitclaim, or convey that real property or interest therein in the manner and upon the terms and conditions approved by the board of supervisors without complying with any other sections in this article. The board of supervisors may, by ordinance, designate any county officer or officers, as are deemed appropriate, to execute sales of the real property or interest therein, provided that a notice of intention that the county officer or officers will execute the sale shall be posted in a public place for five working days prior to effecting the transfer and, at least 10 days prior to

effecting the transfer, the notice shall be published pursuant to Section 6061 in one or more newspapers of general circulation within the county and shall be mailed to any person requesting special notice, to any present tenant of the property, and to all owners of land adjoining the property. These sales shall be subject to final approval by the board of supervisors.

SEC. 4. Section 25843 of the Government Code is amended to read:

25843. The board of supervisors may establish safety incentive programs designed to encourage county officers and employees to follow recognized safety practices and focus upon policies and activities established to reduce the incidence of occupational injury and its associated costs, and may expend funds for incentives and awards when manager or employee efforts have produced quantitatively measurable results in reduction of the incidence rate of occupational injury, or the costs directly associated with occupational injury, or both.

SEC. 5. Section 26220 of the Government Code is amended to read:

26220. (a) The board of supervisors may, by a four-fifths vote of its members, assign for purposes of collection, under any terms and conditions that the board may prescribe, any or all delinquent bills, claims, and accounts, 30 days after the date upon which they are due and payable to the county, and any or all money judgments taken in the name of the county.

(b) The board of supervisors may, by a four-fifths vote of its members, and with the approval of the tax collector, assign for purposes of collection under such terms and conditions as the board may prescribe, any or all delinquent unsecured taxes 90 days after the date upon which they are due and delinquent when, in the judgment of the tax collector, the remedy set forth in Section 2951 of the Revenue and Taxation Code will not be used by the tax collector.

(c) The board of supervisors may assign, for purposes of securing any financing of the same, any obligations arising out of any delinquent assessments or taxes levied on the secured roll by the county or any other political subdivision of the state. No assignment to a collection agency shall be made of obligations arising out of any delinquent assessments or taxes levied on the secured roll by the county or any other political subdivision of the state.

SEC. 6. Section 50274 of the Government Code is amended to read:

50274. (a) At the first organizational meeting of a city selection committee held pursuant to Section 50273, it shall select from among its members a permanent chairman and vice chairman, and such other officers as it deems necessary. The term of office of the chairman and vice chairman shall be not less than one year nor more than four years as determined in the rules and regulations adopted by a city selection committee pursuant to Section 50275. At least 60

days prior to the expiration of the term of office of the chairman and vice chairman, or as otherwise provided in the rules and regulations adopted by a city selection committee pursuant to Section 50275, the city selection committee shall meet and select a successor to the chairman and to the vice chairman.

(b) The officers of the County of San Mateo's City Selection Committee may be the same as San Mateo County's Council of Cities. Any person elected to serve as chairman, vice chairman, or officer may serve his or her entire term of office on San Mateo County's City Selection Committee, provided that the person continues to serve on a city council. If a city selection committee officer is not a mayor, that person may preside, but not vote on any matters before San Mateo County's City Selection Committee unless authorized pursuant to Section 50271.

SEC. 7. Chapter 3.5 (commencing with Section 55530) of Part 2 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 8. Section 56706 of the Government Code is amended to read:

56706. Within 30 days after the date of receiving a petition, the executive officer shall, if any processing fee established pursuant to Section 56383 has been paid, cause the petition to be examined and shall prepare a certificate of sufficiency indicating whether the petition is signed by the requisite number of signers.

If the certificate of the executive officer shows the petition to be insufficient, the executive officer shall immediately give notice by certified mail of the insufficiency to the chief petitioners, if any. That mailed notice shall state in what amount the petition is insufficient. Within 15 days after the date of the notice of insufficiency, a supplemental petition bearing additional signatures may be filed with the executive officer.

Within 10 days after the date of filing a supplemental petition, the executive officer shall examine the supplemental petition and certify in writing the results of his or her examination.

A certificate of sufficiency shall be signed by the executive officer and dated. That certificate shall also state the minimum signature requirements for a sufficient petition and show the results of the executive officer's examination. The executive officer shall mail a copy of the certificate of sufficiency to the chief petitioners, if any.

SEC. 9. Section 32 of the Fairfield-Suisun Sewer District Act (Chapter 303 of the Statutes of 1951) is amended to read:

32. The board may, in its discretion, establish a district treasury and appoint a district treasurer to serve at the pleasure of the district board.

SEC. 10. Section 150 of the Fairfield-Suisun Sewer District Act (Chapter 303 of the Statutes of 1951) is amended to read:

150. There is created in the treasury of either of the cities, or of the district, as determined by the board, a fund entitled the "Fairfield-Suisun Sewer District General Fund."

SEC. 11. Section 153 of the Fairfield-Suisun Sewer District Act (Chapter 303 of the Statutes of 1951) is amended to read:

153. There is created, at the discretion of the board, in the district treasury or in the treasury of either city, a fund called the "Fairfield-Suisun Sewer District Bond Fund, Series ____," (inserting series number) in which the treasurer shall keep money levied by the board for that fund.

SEC. 12. Section 156 is added to the Fairfield-Suisun Sewer District Act (Chapter 303 of the Statutes of 1951), to read:

156. The district treasurer or any other person authorized by the district board to fulfill the treasurer's duties shall give bonds to the district conditioned for performance of their duties, fixed and approved by the governing body and that premium paid by the district.

SEC. 13. Section 157 is added to the Fairfield-Suisun Sewer District Act (Chapter 303 of the Statutes of 1951), to read:

157. Any investments made by the Fairfield-Suisun Sewer District shall be performed pursuant to Article 1 (commencing with Section 53600) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 14. Section 3 of the Vallejo Sanitation and Flood Control District Act (Chapter 17 of the Statutes of 1952, First Extraordinary Session) is amended to read:

Sec. 3. (a) The Vallejo Sanitation and Flood Control District shall be governed by, and under the control of, eight trustees. Seven of the trustees shall be the seven members of the Vallejo City Council. The eighth trustee shall be a member-at-large appointed pursuant to subdivision (b). Each city council member shall cease to be a trustee of the district, and his or her office on the board shall become vacant, at any time that he or she ceases to be a member of the Vallejo City Council.

(b) On or before the date of the first regular meeting of the district, the eighth member-at-large of the board of trustees shall be appointed by the Board of Supervisors of the County of Solano. The board may appoint one of the following persons to be the eighth trustee:

(1) A member of the Board of Supervisors of the County of Solano that represents Supervisorial District 1 or District 2.

(2) A public member who resides in the unincorporated area within the boundaries of the Vallejo Sanitation and Flood Control District.

(c) The Board of Supervisors of the County of Solano may appoint an alternate to the eighth member-at-large of the board of trustees. Appointment of the alternate shall be made pursuant to subdivision (b).

SEC. 15. Section 6 of the Vallejo Sanitation and Flood Control District Act (Chapter 17 of the Statutes of 1952, First Extraordinary Session) is amended to read:

Sec. 6. (a) Each trustee of the district who is a member of the Vallejo City Council shall receive one hundred dollars ($100) per month for his or her services as a trustee of the board and may receive his or her actual and necessary expenses incurred in the performance of his or her duties as trustee, payable from the funds of the district.

(b) The eighth member-at-large trustee, or alternate, shall receive one hundred dollars ($100) for each district meeting attended, whether regular or special, and for any other meeting attended by that trustee, or alternate, at the request of the board as its representative. That trustee, or alternate, shall not, however, be compensated for more than three meetings, or three hundred dollars ($300), in any calendar month. Additionally, that trustee, or alternate, may receive his or her actual and necessary expenses incurred in the performance of his or her duties as trustee or alternate.

(c) The trustees shall annually elect the following officers from among the trustees to serve for a term of one year: president, vice president, and secretary. These officers shall not receive any additional compensation for their services in their capacity as officers for the board. The finance director or the chief financial officer of the district shall be the treasurer of the district.

(d) The district shall remain a legal and political entity separate and apart from the City of Vallejo and shall enjoy all powers granted by this act without exception, including, but not limited to, its operational functions, appointment of staff, planning, financing and contractual authority. The board may adopt and enforce reasonable rules and regulations, ordinances, and resolutions, for the administration and government of the district and to facilitate the exercise of its powers and duties, and exercise all police powers necessary for the maintenance, operation, preservation, use, and enjoyment of its works and facilities.

(e) The trustees shall maintain an office within the district for the transaction of the business of the district at which office all books, records, and papers of the district shall be maintained and shall be open to inspection during normal business hours.

(f) The trustees shall hold regular meetings, in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at those places and those times as the trustees shall, by resolution, prescribe.

SEC. 16. Section 201 of the Colusa Basin Drainage District Act (Chapter 1399 of the Statutes of 1987) is amended to read:

Sec. 201. (a) The Board of Supervisors of Colusa County, the Board of Supervisors of Glenn County, and the Board of Supervisors of Yolo County shall each appoint one person, who may be a supervisor, to serve as a director of the district for the term of office set forth in Section 205. Those persons shall serve at the pleasure of their respective boards of supervisors.

(b) The three directors initially appointed shall determine, by lot, the expiration dates for their initial terms. The terms of two directors shall expire on January 1, 1990, and the term of the other director shall expire on January 1, 1992. The terms shall expire on January 1 of the respective even-numbered year thereafter.

CHAPTER 490

An act to amend Sections 6433, 6434, and 6439 of the Fish and Game Code, relating to aquatic species, and making an appropriation therefor.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 6433 of the Fish and Game Code is amended to read:

6433. The department shall adopt a ballast water control report form, consistent with the form developed by the United States Coast Guard, to monitor compliance with the guidelines and shall assist the Coast Guard in distributing these forms to vessels. The director shall enter into an agreement with the Coast Guard to obtain information from the completed forms, as appropriate.

SEC. 2. Section 6434 of the Fish and Game Code is amended to read:

6434. As a condition for the use of the waters of this state, the operators of all vessels that have the capacity to take on or discharge ballast water shall complete and return a ballast water control report form, as adopted by the department, in accordance with instructions provided with the form.

SEC. 3. Section 6439 of the Fish and Game Code is amended to read:

6439. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 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 491

An act to amend Section 1157 of, and to add Article 8.8 (commencing with Section 31696.1) to Chapter 3 of Part 3 of Division 4 of Title 3 of, the Government Code, relating to county employees.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 1157 of the Government Code is amended to read:

1157. (a) Officers and employees of a public agency, other than those under the uniform payroll system provided for in Article 5 (commencing with Section 12470) of Chapter 5 of Part 2 of Division 3 of Title 2, may authorize the governing body of the public agency to make deductions from their salaries or wages for the payment of premiums on life, accident, health, disability, legal expense, or automobile liability insurance, or on any two or more, under a system of insurance approved by or adopted and carried into effect by the governing body, or for the payment of premiums on National Service Life Insurance or United States Government Converted Insurance. Officers and employees of the public agency may authorize the governing body of the public agency to make deductions from their salaries or wages for the payment of dues or subscription charges of nonprofit membership corporations for defraying the cost of medical service (including services rendered by doctors of medicine, doctors of osteopathic medicine, or doctors of chiropractic), or hospital care, or legal services, or, any of them, under system of medical service, or hospital care, or legal services, or, any of them, approved by or adopted and carried into effect by the governing body.

(b) The board of supervisors may, by resolution, permit officers and employees of a county to authorize deductions from their salaries or wages for the premiums on long-term care insurance established pursuant to Article 8.8 (commencing with Section 31696.1) of Chapter 3 of Part 3 of Division 4 of Title 3 or pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2 and approved by, or adopted and carried into effect by, the retirement association. Materials offering that long-term care insurance shall specify that the long-term care insurance is approved by, or adopted and carried into effect by, the retirement association and not by the county.

SEC. 2. Article 8.8 (commencing with Section 31696.1) is added to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, to read:

Article 8.8. Long-Term Care Group Insurance

31696.1. (a) The board of retirement may provide a long-term care insurance program for retired members and their spouses, their parents, and their spouses' parents.

(b) Subject to Section 31696.5, the board may permit active members and their spouses, their parents, and their spouses' parents to enroll in the long-term care insurance program.

(c) The long-term care insurance plan shall be made available periodically during open enrollment periods determined by the board.

(d) The board shall award contracts to carriers who are qualified to provide long-term care benefits.

(e) The long-term care insurance plan shall include home, community, and institutional care and shall provide substantially equivalent coverage to that required under Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code and shall meet those requirements set forth in the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). However, the Department of Corporations shall have no jurisdiction over the insurance plan authorized by this article.

(f) Notwithstanding subdivision (a), no person shall be enrolled unless he or she meets the eligibility and underwriting criteria approved by the board.

(g) The board shall approve eligibility criteria for enrollment, approve appropriate underwriting criteria for potential enrollees, approve the scope of covered benefits, approve the criteria to receive benefits, and approve any other standards as needed.

31696.2. (a) The full cost of enrollment in a long-term care insurance plan shall be paid by the enrollees.

(b) The long-term care insurance plan shall not become part of, or subject to, the retirement or health benefits programs administered by the system.

31696.3. (a) The board shall establish a trust fund designated as the Long-Term Care Fund for the purpose of the payment of the costs and administration of the long-term care plan. The Long-Term Care Fund shall be held for the exclusive benefit of enrollees and the payment of the costs and administration of the program.

(b) The board shall have exclusive control of the administration and investment of the Long-Term Care Fund, except that in a county having a board of investments, the board of investments shall have exclusive control of the investment of the fund. Funds in the

Long-Term Care Fund shall be invested pursuant to the law governing the investment of the retirement fund.

(c) Income, of whatever nature, earned on the Long-Term Care Fund shall be credited to the fund.

31696.4. The board is authorized to recover the administrative costs of the long-term care insurance program from insurance carriers and premiums paid by enrollees.

31696.5. Subdivision (b) of Section 31696.1 shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make that subdivision applicable in the county.

CHAPTER 492

An act to amend Sections 1746, 1747, 1748, and 1749 of the Health and Safety Code, relating to hospice.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 1746 of the Health and Safety Code is amended to read:

1746. As used in this chapter, the following definitions shall apply:

(a) "Bereavement services" means those services available to the surviving family members for a period of at least one year after the death of the patient. These services shall include an assessment of the needs of the bereaved family, and the development of a care plan that meets these needs, both prior to, and following the death of the patient.

(b) "Hospice" means a specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of life due to the existence of a terminal disease, to provide supportive care to the primary care giver and the family of the hospice patient, and which meets all of the following criteria:

(1) Considers the patient and the patient's family, in addition to the patient, as the unit of care.

(2) Utilizes a interdisciplinary team to assess the physical, medical, psychological, social, and spiritual needs of the patient and the patient's family.

(3) Requires the interdisciplinary team to develop an overall plan of care and to provide coordinated care which emphasizes supportive services, including, but not limited to, home care, pain control, and limited inpatient services. Limited inpatient services are

intended to ensure both continuity of care and appropriateness of services for those patients who cannot be managed at home because of acute complications or the temporary absence of a capable primary care giver.

(4) Provides for the palliative medical treatment of pain and other symptoms associated with a terminal disease, but does not provide for efforts to cure the disease.

(5) Provides for bereavement services following death to assist the family to cope with social and emotional needs associated with the death of the patient.

(6) Actively utilizes volunteers in the delivery of hospice services.

(7) To the extent appropriate, based on the medical needs of the patient, provides services in the patient's home or primary place of residence.

(c) "Inpatient care arrangements" means arranging for those short inpatient stays that may become necessary to manage acute symptoms or due to the temporary absence, or need for respite, of a capable primary care giver. The hospice shall arrange for these stays, ensuring both continuity of care and the appropriateness of services.

(d) "Medical direction" means those services provided by a licensed physician and surgeon who is charged with the responsibility of acting as a consultant to the interdisciplinary team, a consultant to the patient's attending physician and surgeon, as requested, with regard to pain and symptom management, and liaison with physicians and surgeons in the community.

(e) "A interdisciplinary team" means the hospice care team that includes, but is not limited to, the patient and patient's family, a physician and surgeon, a registered nurse, a social worker, a volunteer, and a spiritual care giver. The team shall be coordinated by a registered nurse and shall be under medical direction. The team shall meet regularly to develop and maintain an appropriate plan of care.

(f) "Plan of care" means a written plan developed by the attending physician and surgeon, the medical director or physician and surgeon designee, and the interdisciplinary team that addresses the needs of a patient and family admitted to the hospice program. The hospice shall retain overall responsibility for the development and maintenance of the plan of care and quality of services delivered.

(g) "Skilled nursing services" means nursing services provided by or under the supervision of a registered nurse under a plan of care developed by the interdisciplinary team and the patient's physician and surgeon to a patient and his or her family that pertain to the palliative, supportive services required by patients with a terminal illness. Skilled nursing services include, but are not limited to, patient assessment, evaluation and case management of the medical nursing needs of the patient, the performance of prescribed medical treatment for pain and symptom control, the provision of emotional support to both the patient and his or her family, and the instruction

of care givers in providing personal care to the patient. Skilled nursing services shall provide for the continuity of services for the patient and his or her family. Skilled nursing services shall be available on a 24-hour on-call basis.

(h) "Social service/counseling services" means those counseling and spiritual care services that assist the patient and his or her family to minimize stresses and problems that arise from social, economic, psychological, or spiritual needs by utilizing appropriate community resources, and maximize positive aspects and opportunities for growth.

(i) "Terminal disease" or "terminal illness" means a medical condition resulting in a prognosis of life of one year or less, if the disease follows its natural course.

(j) "Volunteer services" means those services provided by trained hospice volunteers who have agreed to provide service under the direction of a hospice staff member who has been designated by the hospice to provide direction to hospice volunteers. Hospice volunteers may be used to provide support and companionship to the patient and his or her family during the remaining days of the patient's life and to the surviving family following the patient's death.

(k) "Multiple location" means a location or site from which a hospice makes available basic hospice services within the service area of the parent agency. A multiple location shares administration, supervision, policies and procedures, and services with the parent agency in a manner that renders it unnecessary for the site to independently meet the licensing requirements.

(*l*) "Home health aide" has the same meaning as set forth in subdivision (c) of Section 1727.

(m) "Home health aide services" means those services as set forth in subdivision (d) of Section 1727 provided for the personal care of the terminally ill patient and the performance of related tasks in the patient's home in accordance with the plan of care in order to increase the level of comfort and to maintain personal hygiene and a safe, healthy environment for the patient.

(n) "Parent agency" means the part of the hospice that is licensed pursuant to this chapter, and develops and maintains administrative controls of multiple locations. All services provided by the multiple location and parent agency are the responsibility of the parent agency.

SEC. 2. Section 1747 of the Health and Safety Code is amended to read:

1747. (a) No person, political subdivision of the state, or other governmental agency, that is not operating a hospice as of January 1, 1991, shall establish or operate a hospice without first obtaining a license under this chapter.

(b) Any person, political subdivision of the state, or other governmental agency, that is operating a hospice as of January 1,

1991, may continue to operate the hospice only under the following conditions:

(1) The person, political subdivision of the state, or other governmental agency shall apply to the state department for a license under this chapter within 60 days after forms for the application of licensure under this chapter are available from the state department.

(2) The person, political subdivision of the state, or other governmental agency shall cease calling or referring to itself as a hospice upon the final decision of the director upholding the state department's denial of an application for licensure under this chapter.

(c) Nothing in this chapter shall preclude the ongoing use of the title "volunteer hospice" by those organizations that satisfy all of the following:

(1) They do not provide skilled nursing services.

(2) They do not charge patients or families for hospice services, and they do not receive third-party insurance payments for services rendered.

(3) They satisfy the disclosure requirements specified in subdivision (c) of Section 1748.

(d) A small and rural hospice is exempt from the licensing provisions of this chapter and the disclosure requirements of subdivision (c) of Section 1748. A small and rural hospice may provide skilled nursing services and may use the title "volunteer hospice." For purposes of this chapter, a "small and rural hospice" means a hospice that provides services to less than 50 patients per year, does not charge for services, does not receive third-party payment for services rendered, and is not located in a standard metropolitan statistical area.

SEC. 3. Section 1748 of the Health and Safety Code is amended to read:

1748. (a) Except as otherwise provided in subdivision (b) or (d) of Section 1747, no person, political subdivision of the state, or other governmental agency shall establish, conduct, maintain, or represent itself as a hospice unless a license has been issued under this chapter. Multiple locations need not obtain a separate license. Multiple locations shall be listed on the license of the parent agency and each shall pay a licensing fee in the amount prescribed by subdivision (a) of Section 1750.

(b) Any person, political subdivision of the state, or other governmental agency desiring a license to establish a hospice shall file with the state department a verified application on a form prescribed and furnished by the state department which contains any information as may be required by the state department for the proper administration and enforcement of this chapter.

(c) Any hospice that is not required to obtain a license under this chapter shall disclose in all advertisements and information provided to the public all of the following information:

(1) It is not required to be licensed and is not regulated by the state department.

(2) Any complaint against the hospice should be directed to the local district attorney and the state department.

(3) Any complaint against personnel licensed by a board or committee within the Department of Consumer Affairs and employed by the hospice should be directed to the respective board or committee. Any complaint against a certified home health aide or certified nurse assistant shall be directed to the state department.

The address and phone number of any state agency, board, or committee which is responsible for addressing complaints shall be provided by the hospice, upon request, to any patient of the hospice.

SEC. 4. Section 1749 of the Health and Safety Code is amended to read:

1749. (a) To qualify for a license under this chapter, an applicant shall satisfy all of the following:

(1) Be of good moral character. If the applicant is a franchise, franchisee, firm, association, organization, partnership, business trust, corporation, company, political subdivision of the state, or governmental agency, the person in charge of the hospice for which the application for a license is made shall be of good moral character.

(2) Demonstrate the ability of the applicant to comply with this chapter and any rules and regulations promulgated under this chapter by the state department.

(3) File a completed application with the state department that was prescribed and furnished pursuant to Section 1748.

(b) In order for a person, political subdivision of the state, or other governmental agency to be licensed as a hospice it shall satisfy the definition of a hospice contained in Section 1746, and also provide, or make provision for, the following basic services:

(1) Skilled nursing services.

(2) Social services/counseling services.

(3) Medical direction.

(4) Bereavement services.

(5) Volunteer services.

(6) Inpatient care arrangements.

(7) Home health aide services.

(c) The services required to be provided pursuant to subdivision (b) shall be provided in compliance with the "Standards for Quality Hospice Care, 1996," as available from the California State Hospice Association, until the state department adopts regulations establishing alternative standards pursuant to subdivision (d).

(d) The state department may adopt regulations establishing standards for any or all of the services required to be provided under subdivision (b). The regulations of the state department adopted

pursuant to this subdivision shall supersede the standards referenced in subdivision (c) to the extent the regulations duplicate or replace those standards.

CHAPTER 493

An act to amend Sections 23166, 23171, 23176, 23186, and 23191 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 23166 of the Vehicle Code is amended to read:

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

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

(b) All of the following:

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

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

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

Except as is specified in subparagraph (B) of paragraph (4), if the person gives proof of financial responsibility to the Department of Motor Vehicles, the Department of Motor Vehicles shall not suspend the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5, unless the offense occurred in a

vehicle requiring a driver with a class A or class B driver's license or with an endorsement prescribed in Section 15278.

(4) Either of the following:

(A) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation. A person ordered to treatment pursuant to this subparagraph shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subparagraph is a basis for reducing any other probation requirement or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

SEC. 2. Section 23171 of the Vehicle Code is amended to read:

23171. (a) If the court grants probation to any person punished under Section 23170, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least 120 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (5) of subdivision (a) of Section 13352.

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23170, the court, may, in its discretion, order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. In lieu of the minimum term of imprisonment specified in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

(c) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23170 who has not previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186, and unless the person is ordered to participate in and complete a program under subdivision (b), the court shall impose as a condition of probation that the person, subsequent to the date of the current violation, enroll in and participate, for at least 18 months and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given credit for any program activities completed prior to, the date of the current violation. Any person who has previously completed a 12-month or 18-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the

Health and Safety Code shall not be eligible for referral pursuant to this subdivision unless a 30-month licensed program is not available for referral in the county of the person's residence or employment. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

SEC. 3. Section 23176 of the Vehicle Code is amended to read:

23176. (a) If the court grants probation to any person punished under Section 23175, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least 180 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352.

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23175, the court may, in its discretion, order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety

Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

(c) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23175 who has not previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186, and unless the person is ordered to participate in, and complete, a program under subdivision (b), the court shall impose as a condition of probation that the person, subsequent to the date of the current violation, enroll in and participate, for at least 18 months and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given credit for any program activities completed prior to, the date of the current violation. Any person who has previously completed a 12-month or 18-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code shall not be eligible for referral pursuant to this subdivision unless a 30-month licensed program is not available for referral in the county of the person's residence or employment. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

SEC. 4. Section 23186 of the Vehicle Code is amended to read:

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

(a) Be confined in the county jail for at least 120 days and pay a fine of at least three hundred ninety dollars ($390), but not more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section 13352.

(b) All of the following:

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

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

(3) Pursuant to Section 13352.5, have the privilege to operate a motor vehicle be suspended for one year by the Department of Motor Vehicles and, after that one-year period, if the person gives proof of financial responsibility, as defined in Section 16430 to the

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

(4) Either of the following:

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

(B) Enroll in and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the county of the person's residence or employment. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. A person ordered to treatment pursuant to this subparagraph shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subparagraph is a basis for reducing any other probation requirement or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

SEC. 5. Section 23191 of the Vehicle Code is amended to read:

23191. (a) If the court grants probation to any person punished under Section 23190, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least one year, that the person pay a fine of at least three hundred ninety dollars ($390) but not more than five thousand dollars ($5,000), and that the person make restitution or reparation pursuant to Section 1203.1 of the Penal Code. 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) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23190, the court shall impose as a condition of probation that the person enroll in and complete, subsequent to the date of the underlying violation and in a manner satisfactory to the court, an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a minimum condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. Except as provided in subdivision (b), if the court grants probation under this section, the court shall order the treatment prescribed by this subdivision, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license

revocation provisions of paragraph (6) of subdivision (a) of Section 13352.

CHAPTER 494

An act to add Section 1569.725 to the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Residential care facilities for the elderly provide a continuum of long-term care services that support the fluctuating social and personal care needs of elderly residents.

(2) Individuals residing in residential care facilities for the elderly may intermittently, or on an ongoing basis, require in-home nursing assistance or medical therapy provided by a home health agency.

(3) Regulations governing residential care facilities for the elderly establish the types of health procedures permitted in a residential care facility for the elderly setting and limit services to self-care or care provided by a health professional.

(4) Health-related services, including home health care, when utilized appropriately and coordinated and managed effectively, can enhance the quality of care for the resident of the residential care facility for the elderly and avoid unnecessary relocation.

(b) It is the intent of the Legislature to establish provisions that enable the use of home health care services for persons who live in residential care facilities for the elderly.

SEC. 2. Section 1569.725 is added to the Health and Safety Code, immediately following Section 1569.72, to read:

1569.725. (a) A residential care facility for the elderly is authorized to provide incidental medical care through a home health agency, licensed pursuant to Chapter 8 (commencing with Section 1725), when all of the following conditions are met:

(1) The facility, in the judgment of the department, has the ability to provide the supporting care and supervision appropriate to meet the needs of the resident receiving care from a home health agency.

(2) The home health agency has been advised of the regulations pertaining to residential care facilities for the elderly and the requirements related to incidental medical care being provided in the facility.

(3) There is evidence of an agreed-upon protocol between the home health agency and the residential care facility for the elderly.

The protocol shall address areas of responsibility of the home health agency and the facility and the need for communication and the sharing of resident information related to the home health care plan.

(4) There is ongoing communication about the services provided by the home health agency and the frequency and duration of care to be provided.

(b) Nothing in this section is intended to expand the scope of care and supervision for a residential care facility for the elderly, as prescribed by this chapter.

(c) Nothing in this section shall require any care or supervision to be provided by the residential care facility for the elderly beyond that which is permitted in this chapter.

(d) The department shall not be responsible for the evaluation of medical services provided to the resident of the residential care facility for the elderly by the home health agency.

CHAPTER 495

An act to add Section 51256 to, and to add and repeal Section 51257 of, the Government Code, relating to the Williamson Act.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 51256 is added to the Government Code, to read:

51256. Notwithstanding any other provision of this chapter, a city or county, upon petition by a landowner, may enter into an agreement with the landowner to rescind a contract in order to simultaneously place other land under an agricultural conservation easement, as defined in Section 10211 of the Public Resources Code, provided that the board or council makes all of the following findings:

(a) The agreement will not result in discontiguous patterns of urban development.

(b) The agreement is not likely to result in the removal of adjacent land from agricultural use. In making this finding, the board or council shall consider testimony and other evidence presented by the owner or operator of agricultural operations on land adjacent to the contracted land.

(c) The proposed agricultural conservation easement is consistent with the criteria set forth in Sections 10251 and 10252 of the Public Resources Code.

(d) The land proposed to be placed under an agricultural conservation easement is of equal size or larger than the land subject to the contract to be rescinded, and is equally or more suitable for

agricultural use than the land subject to the contract to be rescinded. In determining the suitability of the land for agricultural use, the city or county shall consider the soil quality and water availability of the land, adjacent land uses, and any agricultural support infrastructure.

(e) The value of the proposed agricultural conservation easement, as determined pursuant to Section 10260 of the Public Resources Code, is equal to or greater than 12.5 percent of the cancellation valuation of the land subject to the contract to be rescinded, pursuant to subdivision (a) of Section 51283. The easement value and the cancellation valuation shall be determined within 30 days before the approval of the city or county of an agreement pursuant to this section.

(f) The agreement is approved by the Director of Conservation. The director may approve the agreement if he or she finds that the findings of the board or council, as required by this section, are supported by substantial evidence, and that the proposed agricultural conservation easement is consistent with the criteria set forth in Sections 10251 and 10252 of the Public Resources Code. The director shall not approve the agreement if an agricultural conservation easement has been purchased with funds from the Agricultural Land Stewardship Program Fund, established pursuant to Section 10230 of the Public Resources Code, on the same land proposed to be placed under an agricultural conservation easement pursuant to this section.

SEC. 2. Section 51257 is added to the Government Code, to read:

51257. (a) To facilitate a lot line adjustment, pursuant to subdivision (d) of Section 66412, and notwithstanding any other provision of this chapter, the parties may mutually agree to rescind the contract and simultaneously enter into a new contract pursuant to this chapter, provided that the board or council makes all of the following findings:

(1) The new contract would enforceably restrict the adjusted boundaries of the parcel for an initial term at least as long as the unexpired term of the contract being rescinded, but in no event for less than 10 years.

(2) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.

(3) At least 90 percent of the land under the former contract remains under the new contract.

(4) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as that term is used in Section 51222.

(5) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or of other contracted lands.

(6) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.

(b) Nothing in this section shall limit the authority the board or council may otherwise have to enact additional conditions or restrictions on lot line adjustments.

(c) Only one new contract may be entered into pursuant to this section with regard to a given parcel, prior to January 1, 2000.

(d) In the year 2002, the department's Williamson Act Status Report, prepared pursuant to Section 51207, shall include a review of the performance of this section.

(e) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2003, deletes or extends that date.

CHAPTER 496

An act to amend Sections 799.01, 799.02, and 799.07 of the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 799.01 of the Insurance Code is amended to read:

799.01. As used in this article:

(a) "ELISA" test means an enzyme-linked immunosorbent assay serologic test which has been licensed by the federal Food and Drug Administration to detect antibodies to the human immunodeficiency virus.

(b) "Positive ELISA test" means an ELISA test performed in accordance with the manufacturer's specifications which is reactive on an initial testing and on at least one of two additional tests of the same specimen.

(c) "Western Blot Assay" means an assay which uses reagents consisting of HIV antigens separated by polyacrylamide-gel electrophoresis and then transferred to nitro-cellulose paper to detect antibodies to the human immunodeficiency virus.

(d) "Reactive Western Blot Assay" means a Western Blot Assay which is reactive according to the standards of performance and results specified in the manufacturer's federal Food and Drug Administration approved product circular for the Western Blot Assay reagents and laboratory apparatus.

(e) "HIV antibody test" means an ELISA test or a Western Blot Assay, or both.

(f) "Life or disability income insurer" means an insurer licensed to transact life insurance or disability insurance in this state or a fraternal benefit society licensed in this state.

(g) "Certificate" means a certificate of group life insurance or group disability income insurance delivered in this state, regardless of the situs of the group master policy.

(h) "Policy" means an individual life insurance policy or individual disability income insurance policy delivered in this state or a certificate of life insurance benefits or disability income insurance benefits delivered in this state by a fraternal benefit society.

(i) "Disability income insurance" means insurance against loss of occupational earning capacity arising from injury, sickness, or disablement.

SEC. 2. Section 799.02 of the Insurance Code is amended to read:

799.02. Notwithstanding subdivision (f) of Section 120980 of the Health and Safety Code or any other provisions of law, a life or disability income insurer may decline a life or disability income insurance application or enrollment request on the basis of a positive ELISA test followed by a positive Western Blot Assay performed by or at the direction of the insurer on the same specimen of the applicant.

This authorization applies only to policies, certificates, and applications for coverage (a) that are issued, delivered, or received on or after the effective date of the urgency statute amending this section enacted during the 1989 portion of the 1989–90 Regular Session and (b) the issuance or granting of which is otherwise contingent upon medical review for other diseases or medical conditions to be effective.

This article shall not be construed to prohibit an insurer from declining an application or enrollment request for insurance because the applicant has been diagnosed as having AIDS or ARC by a medical professional.

SEC. 3. Section 799.07 of the Insurance Code is amended to read:

799.07. If an applicant has had a positive ELISA test result or a positive Western Blot Assay or both, a life or disability income insurer shall not report a code to an insurance support organization as defined in Section 791.02 or another insurer unless a nonspecific test result code is used which does not indicate that the individual was subject to testing related to the human immunodeficiency virus.

CHAPTER 497

An act to amend Sections 1033 1063.1, and 1067.02 of the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 1033 of the Insurance Code is amended to read:

1033. (a) Claims allowed in a proceeding under this article shall be given preference in the following order:

(1) Expense of administration.

(2) All claims of the California Insurance Guarantee Association or the California Life and Health Insurance Guarantee Association, and associations or entities performing a similar function in other states, together with claims for refund of unearned premiums and all claims under insurance and annuity policies or contracts, including funding agreements, of an insolvent insurer that are not covered claims.

Claims excluded by paragraphs (3) (except claims for refund of unearned premiums), (4), (5), (7), and (8) of subdivision (c) of Section 1063.1, subdivisions (g) and (h) of Section 1063.2, and paragraph (2) of subdivision (b) of Section 1067.02, are excluded from this priority.

(3) Claims having preference by the laws of the United States.

(4) Unpaid charges due under the provisions of Section 736.

(5) Taxes due to the State of California.

(6) Claims having preference by the laws of this state.

(7) All other claims.

(b) (1) Every claim allowed under a separate account policy, contract, or agreement providing, in effect, that the assets allocated to the separate account are not chargeable with liabilities arising out of any other business of the insurer, shall be satisfied out of the assets properly allocated to and maintained in the separate account, excluding amounts allocated or transferred to the separate account by the insurer pursuant to subdivision (b) of Section 10506, equal to the reserves maintained in the separate account for the policies, contracts, or agreements. No liabilities of the insurer arising out of any other business of the insurer shall be satisfied from assets properly allocated to and maintained in a separate account except (A) from amounts allocated or transferred to the separate account pursuant to subdivision (b) of Section 10506 and (B) from any assets allocated to the separate account that exceed the reserves under the separate account policies, contracts, or agreements. For the purposes of this subdivision, "separate account policies, contracts, or agreements" means any policies, contracts, or agreements that provide for separate accounts as contemplated by Section 10506, 10506.3, 10506.4, or 10541. Any valid and allowed claim for contractual benefits that cannot be satisfied out of the assets properly allocated to and maintained in a separate account for obligations authorized by

subdivision (a) of Section 10506.3 shall be included as a claim against the general account within paragraph (2) of subdivision (a). Any valid and allowed claim against the general account for contractual benefits under an obligation authorized by Section 10506.4 shall be included as a claim within paragraph (2) of subdivision (a).

(2) Notwithstanding any other provision of law, to the extent that any assets of a life insurer, other than those assets properly allocated to, and maintained in, a separate account, have been used to fund or pay any expenses, taxes, or policyholder benefits that are attributable to a separate account policy, contract, or agreement that should have been paid by a separate account prior to the commencement of delinquency proceedings, then upon the commencement of delinquency proceedings, the separate accounts that benefited from this payment or funding shall first be used to repay or reimburse the company's general assets or account for any unreimbursed net sums due at the commencement of delinquency proceedings prior to the application of the separate account assets to the satisfaction of liabilities of the corresponding separate account policies, contracts, and agreements.

(c) Upon the issuance of an order appointing a conservator or liquidator for any person under either Section 1011 or 1016 or both these sections, the lien of taxes due to the State of California imposed by Article 4 (commencing with Section 12491) of Chapter 4 of Part 7 of Division 2 of the Revenue and Taxation Code shall become subordinate to the reasonable administrative expenses of the proceeding under the order.

(d) The following definitions are for purposes of this section only and shall not be used to determine coverage under the California Life and Health Insurance Guarantee Association Act (Article 14.7 (commencing with Section 1067)):

(1) "Funding agreements" means those agreements authorized to be delivered or issued pursuant to Section 10541.

(2) "Annuity" means only those annuity contracts, including period-certain annuities issued by a life insurer, that require for their lawful issuance a certificate of authority from the commissioner, and excludes without limitation all instruments for which the commissioner's certificate of authority is not required, such as promissory notes, installment loans, negotiable instruments, mortgages, and debentures.

(3) Reinsurance contracts shall not be included as insurance or annuity policies or contracts, or funding agreements. However, any insurance or annuity policy or contract, including any funding agreement, that is assumed by an insurer under an assumption reinsurance agreement pursuant to a plan of liquidation, rehabilitation, or reorganization shall, unless the plan provided otherwise, be deemed to retain the issue date of the original insurance or annuity policy or contract, or funding agreement that is assumed.

(e) The provisions of this section are severable. If any portion of this section is held invalid or is preempted by federal law, the remainder of the section and its application shall not be affected. Specifically, should any of paragraphs (1) to (6), inclusive, of subdivision (a) be held to be invalid or preempted by federal law, the claims included within the invalid paragraph shall be included within paragraph (7) of subdivision (a), and the remaining paragraphs shall not be affected thereby.

SEC. 2. Section 1063.1 of the Insurance Code is amended to read:

1063.1. As used in this article:

(a) "Member insurer" means an insurer required to be a member of the association in accordance with subdivision (a) of Section 1063, except and to the extent that the insurer is participating in an insolvency program adopted by the United States government.

(b) "Insolvent insurer" means a member insurer against which an order of liquidation or receivership with a finding of insolvency has been entered by a court of competent jurisdiction.

(c) (1) "Covered claims" means the obligations of an insolvent insurer, including the obligation for unearned premiums, (i) imposed by law and within the coverage of an insurance policy of the insolvent insurer; (ii) which were unpaid by the insolvent insurer; (iii) which are presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings; (iv) which were incurred prior to the date coverage under the policy terminated and prior to, on, or within 30 days after the date the liquidator was appointed; (v) for which the assets of the insolvent insurer are insufficient to discharge in full; (vi) in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state; and (vii) in the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

(2) "Covered claims" does not include obligations arising from the following:

(i) Life, annuity, health, or disability insurance.

(ii) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.

(iii) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.

(iv) Credit insurance.

(v) Title insurance.

(vi) Ocean marine insurance or ocean marine coverage under any insurance policy including claims arising from the following: the Jones Act (46 U.S.C.A. Sec. 688), the Longshore and Harbor Workers' Compensation Act (33 U.S.C.A. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.

(vii) Any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses, except a special excess workers' compensation policy issued pursuant to paragraph (2) of subdivision (a) of Section 3702.8 of the Labor Code which cover all or any part of workers' compensation liabilities of an employer that was previously issued a certificate of consent to self-insure pursuant to subdivision (b) of Section 3700 of the Labor Code.

(3) "Covered claims" does not include any obligations of the insolvent insurer arising out of any reinsurance contracts, nor any obligations incurred after the expiration date of the insurance policy or after the insurance policy has been replaced by the insured or canceled at the insured's request, or after the insurance policy has been canceled by the association as provided in this chapter, or after the insurance policy has been canceled by the liquidator, nor any obligations to any state or to the federal government.

(4) "Covered claims" does not include any obligations to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

An insurer, insurance pool, or underwriting association may not maintain, in its own name or in the name of its insured, any claim or legal action against the insured of the insolvent insurer for contribution, indemnity or by way of subrogation, except insofar as, and to the extent only, that the claim exceeds the policy limits of the insolvent insurer's policy. In those claims or legal actions, the insured of the insolvent insurer shall be entitled to a credit or setoff in the amount of the policy limits of the insolvent insurer's policy, or in the amount of the limits remaining, where those limits have been diminished by the payment of other claims.

(5) "Covered claims," except in cases involving a claim for workers' compensation benefits or for unearned premiums, does not include any claim in an amount of one hundred dollars ($100) or less, nor that portion of any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer.

(6) "Covered claims" does not include that portion of any claim, other than a claim for workers' compensation benefits, that is in excess of five hundred thousand dollars ($500,000).

(7) "Covered claims" does not include any amount awarded as punitive or exemplary damages.

(8) "Covered claims" does not include (i) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured nor (ii) any claim by any person other than the original claimant under the insurance policy in his or her own name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian or other personal representative or trustee in bankruptcy

and does not include any claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.

(9) "Covered claims" does not include any obligations arising out of the issuance of an insurance policy written by the separate division of the State Compensation Insurance Fund pursuant to Sections 11802 and 11803.

(10) "Covered claims" does not include any obligations of the insolvent insurer arising from any policy or contract of insurance issued or renewed prior to the insolvent insurer's admission to transact insurance in the State of California.

(11) "Covered claims" does not include surplus deposits of subscribers as defined in Section 1374.1.

(d) "Admitted to transact insurance in this state" means an insurer possessing a valid certificate of authority issued by the department.

(e) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(f) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not in fact exist.

(g) "Claimant" means any insured making a first-party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(h) "Ocean marine insurance" includes marine insurance as defined in Section 103, except for inland marine insurance, as well as any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance such as hull and machinery, marine builders' risks, and marine protection and indemnity. Those perils and risks insured against include, without limitation, loss, damage, or expense or legal liability of the insured arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including

liability of the insured for personal injury, illness, or death for loss or damage to the property of the insured or another person.

(i) "Unearned premium" means that portion of a premium that had not been earned because of the cancellation of the insolvent insurer's policy and is that premium remaining for the unexpired term of the insolvent insurer's policy. "Unearned premium" does not include any amount sought as return of a premium under any policy providing retroactive insurance of a known loss or return of a premium under any retrospectively rated policy or a policy subject to a contingent surcharge or any policy in which the final determination of the premium cost is computed after expiration of the policy and is calculated on the basis of actual loss experience during the policy period.

SEC. 2.5. Section 1063.1 of the Insurance Code is amended to read:

1063.1. As used in this article:

(a) "Member insurer" means an insurer required to be a member of the association in accordance with subdivision (a) of Section 1063, except and to the extent that the insurer is participating in an insolvency program adopted by the United States government.

(b) "Insolvent insurer" means a member insurer against which an order of liquidation or receivership with a finding of insolvency has been entered by a court of competent jurisdiction.

(c) (1) "Covered claims" means the obligations of an insolvent insurer, including the obligation for unearned premiums, (i) imposed by law and within the coverage of an insurance policy of the insolvent insurer; (ii) which were unpaid by the insolvent insurer; (iii) which are presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings; (iv) which were incurred prior to the date coverage under the policy terminated and prior to, on, or within 30 days after the date the liquidator was appointed; (v) for which the assets of the insolvent insurer are insufficient to discharge in full; (vi) in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state; and (vii) in the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

(2) "Covered claims" also include the obligations assumed by an assuming insurer from a ceding insurer where the assuming insurer subsequently becomes an insolvent insurer if, at the time of the insolvency of the assuming insurer, the ceding insurer is no longer admitted to transact business in this state. Both the assuming insurer and the ceding insurer shall have been member insurers at the time the assumption was made. "Covered claims" under this paragraph shall be required to satisfy the requirements of subparagraphs (i) to (vii), inclusive, of paragraph (1), except for the requirement that the

claims be against policies of the insolvent insurer. The association shall have a right to recover any deposit, bond, or other assets that may have been required to be posted by the ceding company to the extent of covered claim payments and shall be subrogated to any rights the policyholders may have against the ceding insurer.

(3) "Covered claims" does not include obligations arising from the following:

(i) Life, annuity, health, or disability insurance.

(ii) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.

(iii) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.

(iv) Credit insurance.

(v) Title insurance.

(vi) Ocean marine insurance or ocean marine coverage under any insurance policy including claims arising from the following: the Jones Act (46 U.S.C.A. Sec. 688), the Longshore and Harbor Workers' Compensation Act (33 U.S.C.A. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.

(vii) Any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses, except a special excess workers' compensation policy issued pursuant to paragraph (2) of subdivision (a) of Section 3702.8 of the Labor Code that cover all or any part of workers' compensation liabilities of an employer that was previously issued a certificate of consent to self-insure pursuant to subdivision (b) of Section 3700 of the Labor Code.

(4) "Covered claims" does not include any obligations of the insolvent insurer arising out of any reinsurance contracts, nor any obligations incurred after the expiration date of the insurance policy or after the insurance policy has been replaced by the insured or canceled at the insured's request, or after the insurance policy has been canceled by the association as provided in this chapter, or after the insurance policy has been canceled by the liquidator, nor any obligations to any state or to the federal government.

(5) "Covered claims" does not include any obligations to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

An insurer, insurance pool, or underwriting association may not maintain, in its own name or in the name of its insured, any claim or legal action against the insured of the insolvent insurer for contribution, indemnity or by way of subrogation, except insofar as, and to the extent only, that the claim exceeds the policy limits of the insolvent insurer's policy. In those claims or legal actions, the insured of the insolvent insurer is entitled to a credit or setoff in the amount of the policy limits of the insolvent insurer's policy, or in the amount

of the limits remaining, where those limits have been diminished by the payment of other claims.

(6) "Covered claims," except in cases involving a claim for workers' compensation benefits or for unearned premiums, does not include any claim in an amount of one hundred dollars ($100) or less, nor that portion of any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer.

(7) "Covered claims" does not include that portion of any claim, other than a claim for workers' compensation benefits, that is in excess of five hundred thousand dollars ($500,000).

(8) "Covered claims" does not include any amount awarded as punitive or exemplary damages.

(9) "Covered claims" does not include (i) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured nor (ii) any claim by any person other than the original claimant under the insurance policy in his or her own name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian or other personal representative or trustee in bankruptcy and does not include any claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.

(10) "Covered claims" does not include any obligations arising out of the issuance of an insurance policy written by the separate division of the State Compensation Insurance Fund pursuant to Sections 11802 and 11803.

(11) "Covered claims" does not include any obligations of the insolvent insurer arising from any policy or contract of insurance issued or renewed prior to the insolvent insurer's admission to transact insurance in the State of California.

(12) "Covered claims" does not include surplus deposits of subscribers as defined in Section 1374.1.

(d) "Admitted to transact insurance in this state" means an insurer possessing a valid certificate of authority issued by the department.

(e) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(f) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly,

owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not in fact exist.

(g) "Claimant" means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(h) "Ocean marine insurance" includes marine insurance as defined in Section 103, except for inland marine insurance, as well as any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance such as hull and machinery, marine builders' risks, and marine protection and indemnity. Those perils and risks insured against include, without limitation, loss, damage, or expense or legal liability of the insured arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death for loss or damage to the property of the insured or another person.

(i) "Unearned premium" means that portion of a premium that had not been earned because of the cancellation of the insolvent insurer's policy and is that premium remaining for the unexpired term of the insolvent insurer's policy. "Unearned premium" does not include any amount sought as return of a premium under any policy providing retroactive insurance of a known loss or return of a premium under any retrospectively rated policy or a policy subject to a contingent surcharge or any policy in which the final determination of the premium cost is computed after expiration of the policy and is calculated on the basis of actual loss experience during the policy period.

SEC. 3. Section 1067.02 of the Insurance Code is amended to read:

1067.02. (a) This article shall provide coverage for the policies and contracts specified in subdivision (b) to all of the following:

(1) To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts), are the beneficiaries, assignees, or payees of the persons covered under paragraph (2).

(2) To persons who are owners of or certificate holders under those policies or contracts, and who either:

(A) Are residents of this state.

(B) Are not residents, but only under all of the following conditions:

(i) The insurers that issued the policies or contracts are domiciled in this state.

(ii) The insurers never held a license or certificate of authority in the states in which the persons reside.

(iii) The states in which the persons reside have associations similar to the association created by this article.

(iv) The persons are not eligible for coverage by those associations.

(b) (1) This article shall provide coverage to the persons specified in subdivision (a) for direct, nongroup life, health, annuity, and supplemental policies or contracts and for certificates under direct group life, health, annuity, and supplemental policies and contracts, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, structured settlement agreements, allocated annuity contracts, and any immediate or deferred annuity contracts, and unallocated annuity contracts except those expressly excluded pursuant to subparagraph (D) of paragraph (2) of this subdivision.

(2) This article shall not provide coverage for any of the following:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policyholder or contractholder.

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued.

(C) Any portion of a policy or contract to the extent that the rate of interest on which it is based exceeds either or both of the following:

(i) The extent to which the rate of interest, averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated, not to go below a minimum of 0 percent.

(ii) The extent to which the rate of interest, on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average as most recently available, not to go below a minimum of 3 percent.

(D) Guaranteed investment contracts, guaranteed interest contracts, funding agreements, deposit administration contracts, and all other unallocated annuity contracts; provided however, coverage may be provided for unallocated annuity contracts sold (i) by an insurer as to which an order of liquidation, which contained a finding of insolvency and which later became final, was entered by a court of competent jurisdiction in the state of its domicile, after December 20, 1991, but prior to December 20, 1992, and sold to an employer or a trustee or other plan fiduciary in connection with a plan or program of an employer prior to December 20, 1992, for purposes of providing the employees of the employer with deferred compensation or pension benefits and (I) the individual employees have an option to participate or not participate, in whole or in part, in the contract, and

(II) the individual employee contributes from his or her wages some portion of the funds paid into the plan or program, or (ii) sold by a mutual insurer as to which an order of liquidation that contained a finding of insolvency and that later became final was entered by a court of competent jurisdiction in the state of its domicile after December 1, 1991, but prior to December 31, 1991, and sold to an employer qualifying as an Internal Revenue Code Section 501(c)(3) employer or to a trustee or other plan fiduciary in connection with a plan or program of such an employer for purposes of providing the employees of the employer with deferred compensation or pension benefits and (I) the contract was purchased exclusively with funds of the employer in amounts computed as a uniform percentage of the compensation of each employee entitled to participate under the terms of the plan, (II) the contract has a stated maturity date occurring within 15 days prior to that order of liquidation, and (III) the employer also maintained at the time of the insolvency a tax deferred annuity plan or program described in Section 403(b) of the Internal Revenue Code.

(E) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under any of the following:

(i) A multiple employer welfare arrangement as defined in Section 514 of the federal Employee Retirement Income Security Act of 1974, as amended.

(ii) A minimum premium group insurance plan.

(iii) A stop-loss group insurance plan.

(iv) An administrative services only contract.

(F) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policyholder or contractholder, in connection with the service to or administration of the policy or contract.

(G) Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state.

(H) Any annuity issued by a charitable organization that is duly qualified as such under applicable provisions of the Internal Revenue Code, and that is not engaged in the business of insurance as its primary business.

(c) The benefits for which the association may become liable for life insurance and annuity policies shall in no event exceed the lesser of the following:

(1) Eighty percent of the contractual obligations for each policy or contract as modified pursuant to subparagraph (C) of paragraph (2) of subdivision (b), for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(2) (A) With respect to any one life, regardless of the number of policies or contracts:

(i) Two hundred fifty thousand dollars ($250,000) in life insurance death benefits, but not more than one hundred thousand dollars ($100,000) in net cash surrender and net cash withdrawal values for life insurance.

(ii) One hundred thousand dollars ($100,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(B) However, in no event shall the association be liable to expend more than two hundred fifty thousand dollars ($250,000) in the aggregate with respect to any one individual under subparagraph (A).

(C) With respect to any one owner of multiple policies of individual life insurance, whether the policyowner is an individual, firm, corporation, or other legal entity, and whether the persons insured are officers, employees, or other persons in whose lives the policyowner has an insurable interest, five million dollars ($5,000,000) in benefits regardless of the number of the policies and contracts held by the owner.

(d) The health insurance benefits for which the association may become liable shall in no event exceed the lesser of the following:

(1) The contractual obligations for which the insurer is liable or for which the insurer would have been liable if it were not an impaired or insolvent insurer.

(2) With respect to any one individual receiving health care benefits, regardless of the number of policies or contracts, two hundred thousand dollars ($200,000) in health insurance benefits; an amount that shall increase or decrease based upon changes in the health care cost component of the consumer price index from January 1, 1991, to the date on which the insurer becomes an insolvent insurer.

(e) An unallocated annuity contract that is not covered by the association may not be offered to an employer, after January 1, 1994, unless prior to being offered to the employer, or the participation by the employee, the insurer or agent has disclosed to the employer, and employee in writing in a conspicuous manner that the contract is not covered by the association.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 1063.1 of the Insurance Code proposed by both this bill and AB 1148. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 1063.1 of the Insurance Code, and (3) this bill is enacted after AB 1148, in which case Section 2 of this bill shall not become operative.

CHAPTER 498

An act to amend Section 1054.2 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 25, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. This act shall be known and may be cited as "The Hayden and Frusetta Witness Protection Act of 1997."

SEC. 2. Section 1054.2 of the Penal Code is amended to read:

1054.2. (a) (1) Except as provided in paragraph (2), no attorney may disclose or permit to be disclosed to a defendant, members of the defendant's family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054.1 unless specifically permitted to do so by the court after a hearing and a showing of good cause.

(2) Notwithstanding paragraph (1), an attorney may disclose or permit to be disclosed the address or telephone number of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section, is prohibited.

(3) Willful violation of this subdivision by an attorney, persons employed by the attorney, or persons appointed by the court is a misdemeanor.

(b) If the defendant is acting as his or her own attorney, the court shall endeavor to protect the address and telephone number of a victim or witness by providing for contact only through a private investigator licensed by the Department of Consumer Affairs and appointed by the court or by imposing other reasonable restrictions, absent a showing of good cause as determined by the court.

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 499

An act to add Article 2.5. (commencing with Section 1231) to Chapter 2 of Division 10 of the Evidence Code, relating to evidence.

[Approved by Governor September 25, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Article 2.5 (commencing with Section 1231) is added to Chapter 2 of Division 10 of the Evidence Code, to read:

Article 2.5. Sworn Statements Regarding Gang-Related Crimes

1231. Evidence of a prior statement made by a declarant is not made inadmissible by the hearsay rule if the declarant is deceased and the proponent of introducing the statement establishes each of the following:

(a) The statement relates to acts or events relevant to a criminal prosecution under provisions of the California Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1 of the Penal Code).

(b) A verbatim transcript, copy, or record of the statement exists. A record may include a statement preserved by means of an audio or video recording or equivalent technology.

(c) The statement relates to acts or events within the personal knowledge of the declarant.

(d) The statement was made under oath or affirmation in an affidavit; or was made at a deposition, preliminary hearing, grand jury hearing, or other proceeding in compliance with law, and was made under penalty of perjury.

(e) The declarant died from other than natural causes.

(f) The statement was made under circumstances that would indicate its trustworthiness and render the declarant's statement particularly worthy of belief. For purposes of this subdivision, circumstances relevant to the issue of trustworthiness include, but are not limited to, all of the following:

(1) Whether the statement was made in contemplation of a pending or anticipated criminal or civil matter, in which the declarant had an interest, other than as a witness.

(2) Whether the declarant had a bias or motive for fabricating the statement, and the extent of any bias or motive.

(3) Whether the statement is corroborated by evidence other than statements that are admissible only pursuant to this section.

(4) Whether the statement was a statement against the declarant's interest.

1231.1. A statement is admissible pursuant to Section 1231 only if the proponent of the statement makes known to the adverse party the intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

1231.2. A peace office may administer and certify oaths for purposes of this article.

1231.3. Any law enforcement officer testifying as to any hearsay statement pursuant to this article shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training which includes training in the investigation and reporting of cases and testifying at preliminary hearings and trials.

1231.4. If evidence of a prior statement is introduced pursuant to this article, the jury may not be told that the declarant died from other than natural causes, but shall merely be told that the declarant is unavailable.

SEC. 2. This act shall not affect other evidentiary requirements, including, but not limited to, Sections 351 and 352 of the Evidence Code, shall not impair a party's right to attack the credibility of the declarant pursuant to Section 1202 of the Evidence Code, shall not affect the defendant's right to discovery for purposes of producing rebuttal evidence attacking the declarant's credibility, and shall not be used in a manner inconsistent with the defendant's right to due process and to confront witnesses under the United States or California Constitution.

CHAPTER 500

An act to amend Sections 136.1 and 186.22 of the Penal Code, relating to crimes.

[Approved by Governor September 25, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 136.1 of the Penal Code is amended to read:

136.1. (a) Except as provided in subdivision (c), any person who does any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

(1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(3) For purposes of this section, evidence that the defendant was a family member who interceded in an effort to protect the witness or victim shall create a presumption that the act was without malice.

(b) Except as provided in subdivision (c), every person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

(1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge.

(2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof.

(3) Arresting or causing or seeking the arrest of any person in connection with that victimization.

(c) Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years under any of the following circumstances:

(1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person.

(2) Where the act is in furtherance of a conspiracy.

(3) Where the act is committed by any person who has been convicted of any violation of this section, any predecessor law hereto or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation of this section.

(4) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of any other person. All parties to such a transaction are guilty of a felony.

(d) Every person attempting the commission of any act described in subdivisions (a), (b), and (c) is guilty of the offense attempted without regard to success or failure of the attempt. The fact that no person was injured physically, or in fact intimidated, shall be no defense against any prosecution under this section.

(e) Nothing in this section precludes the imposition of an enhancement for great bodily injury where the injury inflicted is significant or substantial.

(f) The use of force during the commission of any offense described in subdivision (c) shall be considered a circumstance in aggravation of the crime in imposing a term of imprisonment under subdivision (b) of Section 1170.

SEC. 2. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(5) Any person convicted under this section, who is also convicted of a felony violation of Section 136.1, which violation is accompanied by a credible threat of violence or death made to the victim or witness to a violent felony, as defined in subdivision (c) of Section 667.5, shall receive, in addition to the penalties provided in paragraph (1) or (2) of this subdivision, an additional consecutive penalty of three years imprisonment. The penalty under this paragraph shall only be imposed if the credible threat of violence or death was made to prevent or dissuade the witness or victim from attending or giving

testimony at any trial for a violent felony, as defined in subdivision (c) of Section 667.5. For purposes of this paragraph, the following terms have the following meanings:

(A) "Credible threat" means a threat made with the intent and apparent ability to carry out the threat so as to cause the target of the threat to reasonably fear for his or her safety or the safety of a third person.

(B) "Threat of violence" means a threat to commit a violent felony, as defined in subdivision (c) of Section 667.5.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission of, attempted commission of, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(8) The intimidation of witnesses and victims, as defined in Section 136.1.

(9) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(10) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

(14) Moneylaundering, as defined in Section 186.10.

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(21) Carjacking, as defined in Section 215.

(22) The sale, delivery, or transfer of a firearm, as defined in Section 12072.

(23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (23), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 4. This act shall become operative only if Assembly Bill 856 of the 1997–98 Regular Session is enacted and becomes effective on or before January 1, 1998.

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CHAPTER 501

An act to amend Sections 1872.8 and 1875.12 of, to amend and renumber Section 1876.2 of, to amend the heading of Article 6 (commencing with Section 1876) of Chapter 12 of Part 2 of Division 1 of, to add Section 1875.18 to, and to repeal Sections 1876, 1876.1, and 1876.20 of, the Insurance Code, relating to insurance.

[Approved by Governor September 25, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. (a) In enacting this act the Legislature finds and declares that it is in the best interests of the State of California to provide the necessary law enforcement resources to curb auto insurance fraud, ultimately lowering premiums for the law abiding and ensuring criminal penalties for the law breaking.

(b) It is incumbent upon the Legislature to identify opportunities for increasing law enforcement resources devoted to fighting auto insurance fraud, particularly opportunities within existing resources.

(c) A recently concluded audit of the Department of Insurance's fraud division by KPMG Peat-Marwick concluded that the department is maintaining, by law, an auto fraud data base that duplicates other existing data bases at a cost of several hundred thousand dollars per year. The study recommended eliminating this data base and reallocating the funds to hire more fraud investigators within the department's fraud division.

(d) Therefore, it is the intent of the Legislature in enacting this act to increase the law enforcement resources available to combat auto insurance fraud within existing resources by eliminating a duplicative auto fraud data base, and ultimately, to provide lower insurance premiums for all law-abiding Californians.

SEC. 2. Section 1872.8 of the Insurance Code is amended to read:

1872.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed one dollar ($1) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund increased investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft. Thirty-four percent of those funds received from ninety-five cents ($0.95) of the assessment fee per insured vehicle shall be distributed to the Bureau of Fraudulent Claims for enhanced investigative efforts, 15 percent of that ninety-five cents ($0.95) shall be deposited in the Motor Vehicle Account for appropriation to the Department of the California Highway Patrol for enhanced prevention and investigative efforts to deter economic automobile theft, and 51 percent of the funds shall be distributed to district attorneys for purposes of investigation and

prosecution of automobile insurance fraud cases, including fraud involving economic automobile theft.

(b) The commissioner shall award funds to district attorneys according to population. The commissioner may alter this distribution formula as necessary to achieve the most effective distribution of funds. Each local district attorney desiring a portion of those funds shall submit to the commissioner an application detailing the proposed use of any moneys which may be provided. The application shall include a detailed accounting of assessment funds received and expended in prior years, including at a minimum (1) the amount of funds received and expended; (2) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (3) results achieved as a consequence of expenditures made, including the number of investigations, arrests, complaints filed, convictions, and the amounts originally claimed in cases prosecuted compared to payments actually made in those cases; and (4) other relevant information as the commissioner may reasonably require. Any district attorney who fails to submit an application within 90 days of the commissioner's deadline for applications shall be subject to loss of distribution of the money. The commissioner may consider recommendations and advice of the bureau and the Commissioner of the California Highway Patrol in allocating moneys to local district attorneys. Any district attorney that receives funds shall submit an annual report to the commissioner, which may be made public, as to the success of the program that they have administered. The report shall provide information and statistics on the number of active investigations, arrests, indictments, and convictions. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning active cases shall be confidential.

(c) The remaining five cents ($0.05) shall be spent for enhanced automobile insurance fraud investigation by the bureau.

(d) Except for funds to be deposited in the Motor Vehicle Account for allocation to the California Highway Patrol for purposes of the Motor Vehicle Prevention Act, (Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code), the funds received under this section shall be deposited in the Insurance Fund and be expended and distributed when appropriated by the Legislature.

(e) In the course of its investigations, the Bureau of Fraudulent Claims shall aggressively pursue all reported incidents of probable fraud and, in addition, shall forward to the appropriate disciplinary body the names of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity along with all relevant supporting evidence.

(f) As used in this section "economic automobile theft" means automobile theft perpetrated for financial gain, including, but not limited to, the following:

(1) Theft of a motor vehicle for financial gain.

(2) Reporting that a motor vehicle has been stolen for the purpose of filing a false insurance claim.

(3) Engaging in any act prohibited by Chapter 3.5 (commencing with Section 10801) of Division 4 of the Vehicle Code.

(4) Switching of vehicle identification numbers to obtain title to a stolen motor vehicle.

SEC. 2.5. Section 1872.8 of the Insurance Code is amended to read:

1872.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed one dollar ($1) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund increased investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft. Thirty-four percent of those funds received from ninety-five cents ($0.95) of the assessment fee per insured vehicle shall be distributed to the Bureau of Fraudulent Claims for enhanced investigative efforts, 15 percent of that ninety-five cents ($0.95) shall be deposited in the Motor Vehicle Account for appropriation to the Department of the California Highway Patrol for enhanced prevention and investigative efforts to deter economic automobile theft, and 51 percent of the funds shall be distributed to district attorneys for purposes of investigation and prosecution of automobile insurance fraud cases, including fraud involving economic automobile theft.

(b) The commissioner shall award funds to district attorneys according to population. The commissioner may alter this distribution formula as necessary to achieve the most effective distribution of funds. Each local district attorney desiring a portion of those funds shall submit to the commissioner an application detailing the proposed use of any moneys that may be provided. The application shall include a detailed accounting of assessment funds received and expended in prior years, including at a minimum (1) the amount of funds received and expended; (2) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (3) results achieved as a consequence of expenditures made, including the number of investigations, arrests, complaints filed, convictions, and the amounts originally claimed in cases prosecuted compared to payments actually made in those cases; and (4) other relevant information as the commissioner may reasonably require. Any district attorney who fails to submit an application within 90 days of the commissioner's deadline for applications shall be subject to loss of distribution of the money. The commissioner may consider recommendations and advice of the bureau and the Commissioner

of the California Highway Patrol in allocating moneys to local district attorneys. Any district attorney that receives funds shall submit an annual report to the commissioner, which may be made public, as to the success of the program administered. The report shall provide information and statistics on the number of active investigations, arrests, indictments, and convictions. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential.

(c) The remaining five cents ($0.05) shall be spent for enhanced automobile insurance fraud investigation by the bureau.

(d) Except for funds to be deposited in the Motor Vehicle Account for allocation to the California Highway Patrol for purposes of the Motor Vehicle Prevention Act, (Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code), the funds received under this section shall be deposited in the Insurance Fund and be expended and distributed when appropriated by the Legislature.

(e) In the course of its investigations, the Bureau of Fraudulent Claims shall aggressively pursue all reported incidents of probable fraud and, in addition, shall forward to the appropriate disciplinary body the names of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity along with all relevant supporting evidence.

(f) As used in this section "economic automobile theft" means automobile theft perpetrated for financial gain, including, but not limited to, the following:

(1) Theft of a motor vehicle for financial gain.

(2) Reporting that a motor vehicle has been stolen for the purpose of filing a false insurance claim.

(3) Engaging in any act prohibited by Chapter 3.5 (commencing with Section 10801) of Division 4 of the Vehicle Code.

(4) Switching of vehicle identification numbers to obtain title to a stolen motor vehicle.

SEC. 2.8. Section 1875.12 of the Insurance Code is amended to read:

1875.12. (a) The commissioner may license an organization as an insurance claims analysis bureau if it meets the following qualifications:

(1) Is a nonprofit corporation organized for the purpose of fraud prevention or is a corporation that has made the filings required by Section 1855.2.

(2) Has at least two years of experience, or has a managing officer with at least two years of experience, determined by the commissioner to be relevant to operation of an insurance claims analysis bureau, or has at least two years' experience collecting and compiling insurance statistical information.

(3) Has a member or subscriber base of sufficient size that is, in the opinion of the commissioner, adequate to assure uniformity in data collection and cost efficiency to the insurer.

(4) Maintains its records in a computerized format.

(b) An applicant seeking a license as an insurance claims analysis bureau shall file with the commissioner the following documents:

(1) A copy of its articles of incorporation, its bylaws, and any rules and regulations governing the conduct of its business.

(2) A list of members or subscribers.

(3) A description of its technical capacity to collect and serve the volume of data necessary to act as an insurance claims analysis bureau.

(4) A statement establishing that the applicant meets the conditions set forth in subdivision (a).

(5) A certificate signed by an officer of the applicant that it will permit any licensed insurer to become a member or subscriber to the insurance claims analysis bureau.

(6) A statement of all of the following:

(A) That it will provide admitted insurers subject to Article 6 (commencing with Section 1876) the ability to submit required information to the claims analysis bureau at no cost to the insurer, and also provide nonmember or nonsubscriber insurers, at no cost to the insurer, any software that is specifically designed for the purpose of submitting information electronically that the bureau requires its insurers to use.

(B) That information from its data base will be made available to state law enforcement agencies pursuant to existing law, and that it will be made available at no cost to those agencies.

(c) This section shall not be interpreted to provide any nonmember or nonsubscriber any rights of membership or subscription in an organization licensed as an insurance claims analysis bureau.

SEC. 3. Section 1875.18 is added to the Insurance Code, to read:

1875.18. (a) Every bodily injury, medical payment, or uninsured motorist claim made under a policy of automobile insurance shall be available, upon request, to law enforcement agencies in this state, whenever that claim relates to an event that occurred within the state.

(b) Every claim subject to subdivision (a) shall be available without regard to any limitation in the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1), or any other provision of law, whether or not the law enforcement agency has formed a reasonable belief that a violation of law may have occurred with regard to the claim.

(c) (1) A licensed insurance claims analysis bureau shall provide automobile claims information, upon request, to a law enforcement agency pursuant to the authority in subdivision (a).

(2) A licensed insurance claims analysis bureau, and any person employed therein, that provides information pursuant to this section shall have the same immunity provided under Section 791.21 as any person disclosing personal or privileged information under Article 6.6 (commencing with Section 791) of Chapter 1.

(d) (1) Claims information requested by law enforcement agencies, pursuant to the authority in this section, shall be used solely for the purpose of investigating and prosecuting automobile insurance fraud. Those requests shall be narrowly formulated in order to protect the privacy rights of citizens of this state, while obtaining the information necessary to conduct specific investigations.

(2) The commissioner shall establish rules governing the access to, and use of, any information requested or obtained pursuant to this section, and the circumstances under which that information may be inspected and corrected.

SEC. 4. The heading of Article 6 (commencing with Section 1876) of Chapter 12 of Part 2 of Division 1 of the Insurance Code is amended to read:

Article 6. Deposit of Automobile Insurance Claims Information

SEC. 5. Section 1876 of the Insurance Code is repealed.

SEC. 6. Section 1876.1 of the Insurance Code is repealed.

SEC. 7. Section 1876.2 of the Insurance Code is amended and renumbered to read:

1876. Every insurer who receives a bodily injury, medical payment, or uninsured motorist claim made under a policy of automobile liability insurance defined in Section 660 or Section 11622 shall within 20 days of the receipt of that claim deposit that claim information with a licensed insurance claims analysis bureau. The claims information deposited pursuant to this section shall include at least the following: (1) the claimant's driver's license number or California identification card number, if applicable; (2) the vehicle license number; (3) the vehicle identification number, if known; and (4) the claimant's social security number, if known to the insurer.

SEC. 8. Section 1876.20 of the Insurance Code is repealed.

SEC. 9. Section 2.5 of this bill incorporates amendments to Section 1872.8 of the Insurance Code proposed by both this bill and AB 349. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 1872.8 of the Insurance Code, and (3) this bill is enacted after AB 349, in which case Section 2 of this bill shall not become operative.

CHAPTER 502

An act to amend Section 14502 of the Government Code and to amend Section 164.55 of the Streets and Highways Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1997. Filed with Secretary of State September 25, 1997.]

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

SECTION 1. Section 14502 of the Government Code is amended to read:

14502. The commission consists of 11 members appointed as follows:

(a) Nine members shall be appointed by the Governor with the advice and consent of the Senate. A member appointed pursuant to this subdivision shall not simultaneously hold an elected public office, or serve on any local or regional public board or commission with business before the commission.

(b) One Member of the Senate appointed by the Senate Committee on Rules and one Member of the Assembly appointed by the Speaker of the Assembly shall be ex officio members without vote and shall participate in the activities of the commission to the extent that such participation is not incompatible with their positions as Members of the Legislature.

(c) Notwithstanding any other provision of law, a voting member of the commission may serve on the High-Speed Rail Authority as established in Division 19.5 (commencing with Section 165000) of the Public Utilities Code.

SEC. 2. Section 164.55 of the Streets and Highways Code is amended to read:

164.55. (a) The department, in cooperation with local transportation officials, shall develop guidelines to implement the intercity rail program. The guidelines shall define the criteria to identify and prioritize projects which can be implemented not later than June 30, 2001, and will provide an efficient system of intercity rail services in the state.

(b) Allocations for intercity rail projects are not required by this section to be matched by local entities.

(c) The commission shall give high priority and an appropriate level of funding to the development and enhancement of an efficient and effective intercity passenger rail system in the state.

(d) "Intercity rail" has the same meaning as the term "intercity rail passenger service" as defined in the Rail Passenger Service Act (45 U.S.C. Sec. 502(11)).

(e) Intercity rail projects eligible for funding include the following corridors:

(1) Los Angeles-San Diego.

(2) Santa Barbara-Los Angeles.

(3) Los Angeles-Fresno-San Francisco Bay area and Sacramento.

(4) San Francisco Bay area-Sacramento-Auburn.

(5) San Francisco-Santa Rosa-Eureka.

(6) Santa Barbara-San Luis Obispo County-San Jose.

(7) Los Angeles-Fullerton-Riverside-Coachella Valley-Calexico.

(8) San Jose-Oakland-Gilroy-Watsonville-Santa Cruz.

(9) San Francisco Bay area-San Jose-Oakland-Gilroy-Salinas-Monterey.

(f) The department shall submit the guidelines to the commission not later than July 1, 1990, and the commission shall adopt the guidelines not later than September 1, 1990.

(g) Any intercity rail corridor that was included among the corridors enumerated in subdivision (e) subsequent to the enactment of this section by Chapter 106 of the Statutes of 1989 is eligible to compete for funding, and funds that had been programmed or allocated prior to the inclusion of the additional eligible corridors need not be programmed or reallocated.

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

In order that the transportation issues addressed in this act may be resolved at the earliest possible time, thereby minimizing the potential disruption in transportation matters, it is necessary that this act take effect immediately.

CHAPTER 503

An act to add Section 12022.53 to the Penal Code, relating to sentencing.

[Approved by Governor September 25, 1997. Filed with Secretary of State September 26, 1997.]

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

SECTION 1. The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime.

SEC. 2. This act shall be known and may be cited as the Sandy Peters Memorial Act.

SEC. 3. Section 12022.53 is added to the Penal Code, to read:

12022.53. (a) This section applies to the following felonies:
(1) Section 187 (murder).
(2) Sections 203 and 205 (mayhem).
(3) Sections 207, 208, 209, and 209.5 (kidnapping).
(4) Section 211 (robbery).
(5) Section 215 (carjacking).
(6) Section 220 (assault with intent to commit a specified felony).
(7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).
(8) Sections 261 and 262 (rape).
(9) Section 264.1 (rape or penetration by a foreign object in concert).
(10) Section 286 (sodomy).
(11) Sections 288 and 288.5 (lewd act on a child).
(12) Section 288a (oral copulation).
(13) Section 289 (penetration by a foreign object).
(14) Section 4500 (assault by life prisoner).
(15) Section 4501 (assault by prisoner).
(16) Section 4503 (holding a hostage by prisoner).
(17) Any felony punishable by death or imprisonment in the state prison for life.
(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony personally used a firearm, shall be punished by a term of imprisonment of 10 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony intentionally and personally discharged a firearm, shall be punished by a term of imprisonment of 20 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(d) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, and who in the commission of that felony intentionally and personally discharged a firearm and proximately caused great bodily injury, as defined in Section 12022.7, to any person other than an accomplice, shall be punished by a term of imprisonment of 25 years to life in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(e) (1) The enhancements specified in this section shall apply to any person charged as a principal in the commission of an offense that includes an allegation pursuant to this section when a violation of

both this section and subdivision (b) of Section 186.22 are pled and proved.

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1, shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section.

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(*l*) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided

in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

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 504

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

[Approved by Governor September 25, 1997. Filed with Secretary of State September 26, 1997.]

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

SECTION 1. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" means any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(10) Arson, in violation of subdivision (a) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308.

(14) Kidnapping, in violation of subdivision (b) of Section 207.

(15) Kidnapping, as punished in subdivision (b) of Section 208.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the carjacking.

(18) Any robbery of the first degree punishable pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 213.

(19) A violation of Section 264.1.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 2. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" means any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July

1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.

(9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(10) Arson, in violation of subdivision (a) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308.

(14) Kidnapping, in violation of subdivision (b) of Section 207.

(15) Kidnapping, as punished in subdivision (b) of Section 208.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the carjacking.

(18) Any robbery of the first degree punishable pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 213.

(19) A violation of Section 264.1.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California,

is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 3. Section 2 of this act shall become operative only if AB 4 is enacted and becomes effective on or before January 1, 1998, in which case Section 1 of this bill shall not become operative.

SEC. 4. The Legislature finds and declares that the amendment of Section 667.5 of the Penal Code made by Sections 1 and 2 of this act which add Section 264.1 of the Penal Code to the list of enumerated offenses defined as "violent felonies" does not constitute a change in, but is declaratory of, existing law.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will

be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 505

An act to amend Section 11370.4 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 25, 1997. Filed with Secretary of State September 26, 1997.]

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

SECTION 1. Section 11370.4 of the Health and Safety Code is amended to read:

11370.4. (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 with respect to a substance containing heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 shall receive an additional term as follows:

(1) Where the substance exceeds one kilogram by weight, the person shall receive an additional term of three years.

(2) Where the substance exceeds four kilograms by weight, the person shall receive an additional term of five years.

(3) Where the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 10 years.

(4) Where the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 15 years.

(5) Where the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 20 years.

(6) Where the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(b) Any person convicted of a violation of, or of conspiracy to violate, Section 11378, 11378.5, 11379, 11379.5, or 11379.6 with respect to a substance containing methamphetamine, amphetamine,

phencyclidine (PCP) and its analogs shall receive an additional term as follows:

(1) Where the substance exceeds one kilogram by weight, or 30 liters by liquid volume, the person shall receive an additional term of three years.

(2) Where the substance exceeds four kilograms by weight, or 100 liters by liquid volume, the person shall receive an additional term of five years.

(3) Where the substance exceeds 10 kilograms by weight, or 200 liters by liquid volume, the person shall receive an additional term of 10 years.

(4) Where the substance exceeds 20 kilograms by weight, or 400 liters by volume, the person shall receive an additional term of 15 years.

In computing the quantities involved in this subdivision, plant or vegetable material seized shall not be included.

The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(c) The additional terms provided in this section shall not be imposed unless the allegation that the weight of the substance containing heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, methamphetamine, amphetamine, or phencyclidine (PCP) and its analogs exceeds the amounts provided in this section is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(d) The additional terms provided in this section shall be in addition to any other punishment provided by law.

(e) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

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 506

An act to add and repeal Title 7 (commencing with Section 14000) of Part 4 of the Penal Code, relating to law enforcement, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1997. Filed with Secretary of State September 26, 1997.]

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

SECTION 1. Title 7 (commencing with Section 14000) is added to Part 4 of the Penal Code, to read:

TITLE 7. COMMUNITY LAW ENFORCEMENT AND RECOVERY DEMONSTRATION PROJECT

14000. (a) The City and County of Los Angeles may establish a Community Law Enforcement and Recovery (CLEAR) Demonstration Project, a multiagency gang intervention program, which shall be administered by the City of Los Angeles under a joint powers agreement with the Los Angeles County Sheriff's Department, the Los Angeles County District Attorney's office, the Los Angeles County Probation Department, the Los Angeles Police Department, and the Los Angeles City Attorney's office.

(b) The parties to the agreement shall work together to provide a flexible and coordinated response to crime perpetrated by criminal street gangs, in particular the "18th Street Gang," by addressing each community's gang problems and identifying the gangs associated with each community.

14001. The role of each party to the agreement is as follows:

(a) The district attorney shall do all of the following:

(1) Appoint a Gang Intervention Coordinator and provide staff to the coordinator for the purposes of coordinating the project among the parties and between the parties and community groups.

(2) Conduct training for team members and outside agencies and prepare written materials regarding successful coordinated antigang strategies.

(3) Track all arrests made by the CLEAR team and prepare reports on the progress of the prosecution effort from the point of arrest through the final court disposition of each case, including the length of imprisonment or the terms of probation ordered.

(4) Vertically prosecute the most difficult cases generated by CLEAR team arrests using novel and innovative prosecution strategies that include granting cross-designation status to city prosecutors so that these cases may be effectively pursued in superior court.

(5) Prepare and prosecute civil injunctions against gang activities occurring within the target area.

(6) Coordinate prevention and intervention strategies with community-based organizations, schools, and participating agencies and assist in the design and implementation of these programs.

(b) The sheriff's department shall do both of the following:

(1) Use jail and prison information to assist in the resolution of unsolved homicides.

(2) Coordinate crime information between law enforcement agencies.

(c) The probation department shall do all of the following:

(1) Coordinate all target gang members on probation into one case load for intensive supervision.

(2) Meet with community organizations and schools to assess their needs with respect to gang intervention.

(3) Enforce probation terms and perform probation searches.

(4) Provide information on probationary status of gang members to local law enforcement agencies.

(d) The police department shall do both of the following:

(1) Provide intensive law enforcement in areas most impacted by criminal street gangs.

(2) Coordinate gang information with the sheriff's department and probation department to identify gang members for targeted law enforcement activities.

(e) The city attorney shall do all of the following:

(1) Prosecute misdemeanor criminal offenses.

(2) Coordinate civil building abatement and nuisance abatement activities.

(3) Conduct vertical prosecutions of gang members.

14002. The parties shall be consolidated as a mobile response unit that travels to each community that is targeted for gang intervention strategies and operates from one central location in that community.

14003. (a) The parties may solicit assistance from local school police, the federal Bureau of Alcohol, Tobacco, and Firearms, the federal Housing and Urban Development Agency, the state parole authority, and the Department of the Youth Authority for witness protection and information and strategies for law enforcement.

(b) The CLEAR project shall coordinate with community-based organizations, schools, and businesses to assess and respond to community enforcement needs and concerns. The purpose of this coordination shall be to increase communication between community members and law enforcement agencies, to foster the exchange of information about ongoing criminal activity, and to

respond creatively and quickly to community needs. Some cooperative approaches may include community-based policing and prosecution, probation ride-alongs, target programs, civil injunctions, and antitruancy and curfew violation programs.

14004. A Community Impact Team may be formed as a citizens' advisory committee to the CLEAR project.

14005. An independent evaluation of the effectiveness of the CLEAR project, including a detailed cost-benefit analysis, shall be prepared and submitted to the Legislature two years from the date that funds are initially appropriated for the project, or six months after the end of the project, whichever is earlier. The evaluation shall be submitted to the chairpersons of the Assembly and Senate public safety committees, the chairpersons of the Assembly and Senate fiscal committees, and the Chairperson of the Joint Legislative Audit Committee. The Board of Corrections shall choose the entity that will conduct the evaluation through a competitive bidding process after sending out requests for proposals. The evaluation shall include, but shall not be limited to, a description of the extent to which the project has accomplished the following:

(a) A 5 percent increase in the resolution rate of gang homicides in the target areas.

(b) A 5 percent decrease in violent felonies within the target area.

(c) A 5 percent decrease in nuisance activities by gangs in the target area.

14006. The CLEAR project shall remain operative until no later than two years from the date that funds are initially appropriated by the Legislature for the project. This title shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 2. The sum of one million two hundred thousand dollars ($1,200,000) is hereby appropriated from the General Fund to the City of Los Angeles for the purposes of implementing Title 7 (commencing with Section 14000) of Part 4 of the Penal Code, as enacted by Section 1 of this act. The city shall disburse these funds, without withholding any portion of the funds to cover amounts that may otherwise be in dispute, as follows:

(a) Two hundred thousand dollars ($200,000) to the Gang Intervention Coordinator.

(b) Two hundred forty-eight thousand dollars ($248,000) to the Los Angeles Police Department.

(c) One hundred forty-one thousand dollars ($141,000) to the Los Angeles City Attorney.

(d) Three hundred thousand dollars ($300,000) to the Los Angeles County Sheriff.

(e) One hundred sixty-nine thousand dollars ($169,000) to the Los Angeles County District Attorney.

(f) One hundred forty-two thousand dollars ($142,000) to the Los Angeles County Probation Department.

SEC. 3. Due to the unique circumstances that the CLEAR Demonstration Project has already been developed in Los Angeles County, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. This special legislation is, therefore, necessarily applicable only to Los Angeles County.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to respond to the increasing gang problem in Los Angeles County and throughout the state, it is necessary that this act take effect immediately.

CHAPTER 507

An act to add Title 7.5 (commencing with Section 14020) to Part 4 of the Penal Code, relating to crime prevention, and making an appropriation therefor.

[Approved by Governor September 25, 1997. Filed with Secretary of State September 26, 1997.]

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

SECTION 1. Title 7.5 (commencing with Section 14020) is added to Part 4 of the Penal Code, to read:

TITLE 7.5. THE HERTZBERG-LESLIE WITNESS PROTECTION ACT

14020. There is hereby established the Witness Protection Program.

14021. As used in this title:

(a) "Witness" means any person who has been summoned, or is reasonably expected to be summoned, to testify in a criminal matter, including grand jury proceedings, for the people whether or not formal legal proceedings have been filed. Active or passive participation in the criminal matter does not disqualify an individual from being a witness. "Witness" may also apply to family, friends, or associates of the witness who are deemed by the Attorney General to be endangered.

(b) "Credible evidence" means evidence leading a reasonable person to believe that substantial reliability should be attached to the evidence.

(c) "Protection" means formal admission into a witness protection program established by this title memorialized by a written agreement between the Attorney General and the witness.

14022. The program shall be administered by the Attorney General. In any criminal proceeding within this state, when the action is brought by local prosecutors, where credible evidence exists of a substantial danger that a witness may suffer intimidation or retaliatory violence, the Attorney General may reimburse state and local agencies for the costs of providing witness protection services.

14023. The Attorney General shall give priority to matters involving organized crime, gang activities, drug trafficking, and cases involving a high degree of risk to the witness. Special regard shall also be given to the elderly, the young, battered, victims of domestic violence, the infirm, the handicapped, and victims of hate incidents.

14024. The Attorney General shall coordinate the efforts of state and local agencies to secure witness protection services and then reimburse those state and local agencies for the costs of the services that he or she determines to be necessary to protect a witness from bodily injury and otherwise to assure the health, safety, and welfare of the witness. The Attorney General may reimburse the state or local agencies that provide witnesses with any of the following:

(a) Armed protection or escort by law enforcement officials or security personnel before, during, or subsequent to, legal proceedings.

(b) Physical relocation to an alternate residence.

(c) Housing expense.

(d) Appropriate documents to establish a new identity.

(e) Transportation or storage of personal possessions.

(f) Basic living expenses, including, but not limited to, food, transportation, utility costs, and health care.

(g) Other services as needed and approved by the Attorney General.

14025. The witness protection agreement shall be in writing, and shall specify the responsibilities of the protected person that establish the conditions for the Attorney General providing protection. The protected person shall agree to all of the following:

(a) If a witness or potential witness, to testify in and provide information to all appropriate law enforcement officials concerning all appropriate proceedings.

(b) To refrain from committing any crime.

(c) To take all necessary steps to avoid detection by others of the facts concerning the protection provided to that person under this title.

(d) To comply with legal obligations and civil judgments against that person.

(e) To cooperate with all reasonable requests of officers and employees of this state who are providing protection under this title.

(f) To designate another person to act as agent for the service of process.

(g) To make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation.

(h) To disclose any probation or parole responsibilities, and if the person is on probation or parole.

(i) To regularly inform the appropriate program official of his or her activities and current address.

14025.5. The Attorney General shall not be liable for any condition in the witness protection agreement that cannot reasonably be met due to a witness committing a crime during participation in the program.

14026. Funds available to implement this title may be used for any of the following:

(a) To protect witnesses where credible evidence exists that they may be in substantial danger of intimidation or retaliatory violence because of their testimony.

(b) To provide temporary and permanent relocation of witnesses and provide for their transition and well-being into a safe and secure environment.

(c) To pay the costs of administering the program.

14026.5. For the purposes of this title, notwithstanding Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a witness, as defined in subdivision (a) of Section 14021, selected by the Attorney General to receive services under the program established pursuant to this title because he or she has been or may be victimized due to the testimony he or she will give, shall be deemed a victim.

14027. The Attorney General shall issue appropriate guidelines and may adopt regulations to implement this title. These guidelines shall include:

(a) A process whereby state and local agencies shall apply for reimbursement of the costs of providing witness protection services.

(b) An appropriate level for the match that shall be made by local agencies. The Attorney General may also establish a process through which to waive the required local match when appropriate.

14028. The State of California, the counties and cities within the state, and their respective officers and employees shall have immunity from civil liability for any decision declining or revoking protection to a witness under this title.

14029. All information relating to any witness participating in the program established pursuant to this title shall remain confidential and is not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

14030. (a) The Attorney General shall establish a liaison with the United States Marshal's office in order to facilitate the legal processes over which the federal government has sole authority, including, but

not limited to, those processes included in Section 14024. The liaison shall coordinate all requests for federal assistance relating to witness protection as established by this title.

(b) The Attorney General shall pursue all federal sources that may be available for implementing this program. For that purpose, the Attorney General shall establish a liaison with the United States Department of Justice.

(c) The Attorney General with the Board of Control shall establish procedures to maximize federal funds for witness protection services.

14031. Commencing one year after the effective date of this title, the Attorney General shall make an annual report to the Legislature no later than January 1 on the fiscal and operational status of the program.

14032. The administrative costs of the Attorney General for the purposes of administering this title shall be limited to 5 percent of all costs incurred pursuant to this title.

14033. (a) The Governor's budget shall specify the estimated amount in the Restitution Fund that is in excess of the amount needed to pay claims pursuant to Sections 13960 to 13965, inclusive, of the Government Code, to pay administrative costs for increasing restitution funds, and to maintain a prudent reserve.

(b) It is the intent of the Legislature that, notwithstanding Government Code Section 13967, in the annual Budget Act, funds be appropriated to the Attorney General from those funds that are in excess of the amount specified pursuant to subdivision (a) for the purposes of this title.

SEC. 2. The sum of three million dollars ($3,000,000) is hereby appropriated from the Restitution Fund to the Attorney General for the purpose of implementing Title 7.5 (commencing with Section 14020) of Part 4 of the Penal Code, as added by Section 1 of this act.

CHAPTER 508

An act to add and repeal Section 2080.1 of the Fish and Game Code, relating to endangered species.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 2080.1 is added to the Fish and Game Code, to read:

2080.1. (a) Notwithstanding any other provision of this chapter, or Chapter 10 (commencing with Section 1900) or Chapter 11 (commencing with Section 1925) of Division 2, but subject to subdivision (c), if any person obtains from the Secretary of the

Interior or the Secretary of Commerce an incidental take statement pursuant to Section 1536 of Title 16 of the United States Code or an incidental take permit pursuant to Section 1539 of Title 16 of the United States Code that authorizes the taking of an endangered species or a threatened species that is listed pursuant to Section 1533 of Title 16 of the United States Code and that is an endangered species, threatened species, or a candidate species pursuant to this chapter, no further authorization or approval is necessary under this chapter for that person to take that endangered species, threatened species, or candidate species identified in, and in accordance with, the incidental take statement or incidental take permit, if that person does both of the following:

(1) Notifies the director in writing that the person has received an incidental take statement or an incidental take permit issued pursuant to the federal Endangered Species Act of 1973 (16 U.S.C.A. Sec. 1531 et seq.).

(2) Includes in the notice to the director a copy of the incidental take statement or incidental take permit.

(b) Upon receipt of the notice specified in paragraph (1) of subdivision (a), the director shall immediately have published in the General Public Interest section of the California Regulatory Notice Register the receipt of that notice.

(c) Within 30 days after the director has received the notice described in subdivision (a) that an incidental take statement or an incidental take permit has been issued pursuant to the federal Endangered Species Act of 1973, the director shall determine whether the incidental take statement or incidental take permit is consistent with this chapter. If the director determines within that 30-day period, based upon substantial evidence, that the incidental take statement or incidental take permit is not consistent with this chapter, then the taking of that species may only be authorized pursuant to this chapter.

(d) The director shall immediately publish the determination pursuant to subdivision (c) in the General Public Interest section of the California Regulatory Notice Register.

(e) Unless deleted or extended by a later enacted statute that is chaptered before the date this section is repealed, this section shall remain in effect only until, and is repealed on, the effective date of an amendment to Section 1536 or Section 1539 of Title 16 of the United States Code that alters the requirements for issuing an incidental take statement or an incidental take permit, as applicable.

CHAPTER 509

An act to add and repeal Section 239 of the Code of Civil Procedure, relating to juries.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 239 is added to the Code of Civil Procedure, to read:

239. (a) The Judicial Council shall conduct a jury selection pilot project in three counties, to be designated by the Judicial Council subject to the approval of the affected courts and the affected county board of supervisors. The goals of this jury selection pilot project are to do both of the following:

(1) Improve juror utilization and the management of jurors' time by encouraging courts and counsel to use a variety of methods for screening jurors prior to their arrival in the courtroom for oral voir dire.

(2) Determine whether procedures can be developed which protect the rights of the parties while enabling most jurors who travel to the courthouse to actually serve on a jury.

(b) The project shall include the development of processes for improved selection of jurors utilizing the experience and advice of judges, jury commissioners, and trial lawyers from the civil and criminal bars in many jurisdictions, and shall test the routine use of questionnaires to screen prospective jurors to reduce the number of people called into the courtroom for face-to-face interviews. In developing the project design, the Judicial Council shall consult with the judges, court administrators, and lawyers in the counties to be affected.

(c) The Judicial Council shall collect baseline data concerning juror utilization and service in each project county, evaluate the changes resulting from adoption of the new procedures in each county, and describe the advantages, disadvantages, and acceptability of such a system for use on a statewide basis. The project shall be deemed to have met its objectives if (1) there is at least a 20 percent reduction in the total time spent at the courthouse by all jurors either prior to being impaneled or, if never impaneled, prior to being released from service; and (2) there is a one-third reduction of prospective jurors in the pilot project counties who travel to the courthouse and do not serve on a jury. The Judicial Council shall report its findings and recommendations to the Legislature on or before January 1, 2001.

(d) This section shall remain in effect only until July 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2001, deletes or extends that date.

CHAPTER 510

An act to amend Section 45 of the Code of Civil Procedure, and to amend Sections 252 and 366.26 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 45 of the Code of Civil Procedure is amended to read:

45. An appeal from a judgment freeing a minor who is a dependent child of the juvenile court from parental custody and control, or denying a recommendation to free a minor from parental custody or control, shall have precedence over all cases in the court to which an appeal in the matter is taken. In order to enable the child to be available for adoption as soon as possible and to minimize the anxiety to all parties, the appellate court shall grant an extension of time to a court reporter or to counsel only upon an exceptional showing of good cause.

SEC. 2. Section 252 of the Welfare and Institutions Code is amended to read:

252. At any time prior to the expiration of 10 days after service of a written copy of the order and findings of a referee, a minor or his or her parent or guardian or, in cases brought pursuant to Section 300, the county welfare department may apply to the juvenile court for a rehearing. That application may be directed to all or to any specified part of the order or findings, and shall contain a statement of the reasons the rehearing is requested. If all of the proceedings before the referee have been taken down by an official reporter, the judge of the juvenile court may, after reading the transcript of those proceedings, grant or deny the application. If proceedings before the referee have not been taken down by an official reporter, the application shall be granted as of right. If an application for rehearing is not granted, denied, or extended within 20 days following the date of its receipt, it shall be deemed granted. However, the court, for good cause, may extend the period beyond 20 days, but not in any event beyond 45 days, following the date of receipt of the application, at which time the application for rehearing shall be deemed granted unless it is denied within that period. All decisions to grant or deny the application, or to extend the period, shall be expressly made in a written minute order with copies provided to the minor or his or her parent or guardian, and to the attorneys of record.

SEC. 3. Section 366.26 of the Welfare and Institutions Code, as amended by Section 5.5 of Chapter 1083 of the Statutes of 1996, 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 interest of the minor because 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. 4. Section 366.26 of the Welfare and Institutions Code, as amended by Section 6.5 of Chapter 1083 of the Statutes of 1996, 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 interest of the minor because 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.

CHAPTER 511

An act to amend Section 1644.5 of the Health and Safety Code, relating to health.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1644.5 of the Health and Safety Code is amended to read:

1644.5. (a) No tissues shall be transferred into the body of another person by means of transplantation, unless the donor of the tissues has been screened and found nonreactive by laboratory tests for evidence of infection with HIV, agents of viral hepatitis (HBV and HCV), human T lymphotrophic virus-1 (HTLV-1), and syphilis. The state department may adopt regulations requiring additional screening tests of donors or tissues when, in the opinion of the state department, the action is necessary for the protection of the public, donors, or recipients.

(b) Notwithstanding subdivision (a), infectious disease screening of blood and blood products shall be carried out solely in accordance with Article 2 (commencing with Section 1601) of Chapter 4.

(c) All donors of sperm shall be screened and found nonreactive as required under subdivision (a), except in the following instances:

(1) A recipient of sperm, from a sperm donor known to the recipient, may waive a second or other repeat testing of that donor if the recipient is informed of the requirements for testing donors under this section and signs a written waiver.

(2) A recipient of sperm may consent to therapeutic insemination of sperm or use of sperm in other advanced reproductive technologies even if the sperm donor is found reactive for hepatitis B, hepatitis C, or syphilis if the sperm donor is the spouse of, partner of, or designated donor for that recipient. The physician providing insemination or advanced reproductive technology services shall advise the donor and recipient of the potential medical risks associated with receiving sperm from a reactive donor. The donor and the recipient shall sign a document affirming that each comprehends the medical repercussions of using sperm from a reactive donor for the proposed procedure and that each consents to it. Copies of the document shall be placed in the medical records of the donor and the recipient.

(3) Sperm whose donor has tested reactive for syphilis may be used for the purposes of insemination or advanced reproductive technology only after the donor has been treated for syphilis. Sperm whose donor has tested reactive for hepatitis B may be used for the purposes of insemination or advanced reproductive technology only after the recipient has been vaccinated against hepatitis B.

(d) Subdivision (a) shall not apply to the transplantation of tissue from a donor who has not been tested or, with the exception of HIV, has been found reactive for the infectious diseases listed in subdivision (a) or for which the state department has, by regulation, required additional screening tests, if both of the following conditions are satisfied:

(1) The physician and surgeon performing the transplantation has determined any one or more of the following:

(A) Without the transplantation the intended recipient will most likely die during the period of time necessary to obtain other tissue or to conduct the required tests.

(B) The intended recipient already is diagnosed with the infectious disease for which the donor has tested positive.

(C) The symptoms from the infectious disease for which the donor has tested positive will most likely not appear during the intended recipient's likely lifespan after transplantation with the tissue or may be treated prophylactically if they do appear.

(2) Consent for the use of the tissue has been obtained from the recipient, if possible, or if not possible, from a member of the recipient's family, or the recipient's legal guardian. For purposes of this section, "family" shall mean spouse, adult son or daughter, either parent, adult brother or sister, or grandparent.

(e) Human breast milk from donors who test reactive for agents of viral hepatitis (HBV and HCV), human T lymphotrophic virus-1 (HTLV-1), HIV, or syphilis shall not be used for deposit into a milk bank for human ingestion in California.

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CHAPTER 512

An act to add Section 1262 to the Health and Safety Code, and to amend Section 5622 of, and to add Section 5768.5 to, the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1262 is added to the Health and Safety Code, to read:

1262. (a) When a mental health patient is being discharged from one of the facilities specified in subdivision (c), the patient and the patient's conservator, guardian, or other legally authorized representative shall be given a written aftercare plan prior to the patient's discharge from the facility. The written aftercare plan shall include, to the extent known, all of the following components:

(1) The nature of the illness and followup required.

(2) Medications including side effects and dosage schedules. If the patient was given an informed consent form with his or her medications, the form shall satisfy the requirement for information on side effects of the medications.

(3) Expected course of recovery.

(4) Recommendations regarding treatment that are relevant to the patient's care.

(5) Referrals to providers of medical and mental health services.

(6) Other relevant information.

(b) The patient shall be advised by facility personnel that he or she may designate another person to receive a copy of the aftercare plan. A copy of the aftercare plan shall be given to any person designated by the patient.

(c) Subdivision (a) applies to all of the following facilities:

(1) A state mental hospital.

(2) A general acute care hospital as described in subdivision (a) of Section 1250.

(3) An acute psychiatric hospital as described in subdivision (b) of Section 1250.

(4) A psychiatric health facility as described in Section 1250.2.

(5) A mental health rehabilitation center as described in Section 5675 of the Welfare and Institutions Code.

(6) A skilled nursing facility with a special treatment program, as described in Section 51335 and Sections 72443 to 72475, inclusive, of Title 22 of the California Code of Regulations.

SEC. 2. Section 5622 of the Welfare and Institutions Code is amended to read:

5622. (a) A licensed inpatient mental health facility, as described in subdivision (c) of Section 1262 of the Health and Safety Code, operated by a county or pursuant to a county contract, shall, prior to the discharge of any patient who was placed in the facility, prepare a written aftercare plan. The aftercare plan, to the extent known, shall specify the following:

(1) The nature of the illness and followup required.

(2) Medications, including side effects and dosage schedules. If the patient was given an informed consent form with his or her medications, the form shall satisfy the requirement for information on side effects of the medications.

(3) Expected course of recovery.

(4) Recommendations regarding treatment that are relevant to the patient's care.

(5) Referrals to providers of medical and mental health services.

(6) Other relevant information.

(b) Any person undergoing treatment at a facility under the Lanterman-Petris-Short Act or a county Bronzan-McCorquodale facility and the person's conservator, guardian, or other legally authorized representative shall be given a written aftercare plan prior to being discharged from the facility. The person shall be advised by facility personnel that he or she may designate another person to receive a copy of the aftercare plan.

(c) A copy of the aftercare plan shall be given to any person designated under subdivision (b). A patient who is released from any local treatment facility described in subdivision (c) of Section 1262 of the Health and Safety Code on a voluntary basis may refuse any or all services under the written aftercare plan.

SEC. 3. Section 5768.5 is added to the Welfare and Institutions Code, to read:

5768.5. (a) When a mental health patient is being discharged from any facility authorized under Section 5675 or 5768, the patient and the patient's conservator, guardian, or other legally authorized representative shall be given a written aftercare plan prior to the patient's discharge from the facility. The written aftercare plan shall include, to the extent known, the following components:

(1) The nature of the illness and followup required.

(2) Medications including side effects dosage schedules. If the patient was given an informed consent form with his or her medications, the form shall satisfy the requirement for information on side effects of the medications.

(3) Expected course of recovery.

(4) Recommendations regarding treatment that are relevant to the patient's care.

(5) Referrals to providers of medical and mental health services.

(6) Other relevant information.

(b) The patient shall be advised by facility personnel that he or she may designate another person to receive a copy of the aftercare plan.

A copy of the aftercare plan shall be given to any person designated by the patient.

CHAPTER 513

An act to amend Section 17014 of the Education Code, relating to school facilities.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 17014 of the Education Code, as added by Chapter 277 of the Statutes of 1996, is amended to read:

17014. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and encourage applicants to maintain all buildings under their control, the board shall require the applicant to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the district's general fund for the exclusive purpose of providing moneys for regular maintenance and routine repair of school buildings, according the highest priority to funding for the purpose set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for the term of the lease agreements of all projects constructed under this chapter, a minimum amount equal to or greater than 2 percent of the applicant's General Fund budget for that fiscal year. This paragraph is applicable only to the following districts:

(A) High school districts with average daily attendance greater than 300.

(B) Elementary school districts with average daily attendance greater than 900.

(C) Unified school districts with average daily attendance greater than 1,200.

(c) For each project funded after July 1, 1998, the board shall require the applicant school district governing board to certify, as part of the school district's annual budget process and beginning in the fiscal year in which the project is funded by the state, that a plan has been prepared for completing major maintenance, repair, and replacement requirements for the project. For purposes of this subdivision, the term "major maintenance, repair, and replacement"

means roofing, siding, painting, floor and window coverings, fixtures, cabinets, heating and cooling systems, landscaping, fences, and other items designated by the governing board of the school district. The board shall require the school district's governing board to certify that the plan includes and is being implemented as follows:

(1) Identification of the major maintenance, repair, and replacement needs for the project.

(2) Specification of a schedule for completing the major maintenance, repair, and replacement needs.

(3) Specification of a current cost estimate for the scheduled major maintenance, repair, and replacement needs.

(4) Specification of the school district's schedule for funding a reserve to pay for the scheduled major maintenance, repair, and replacement needs.

(5) Review of the plan annually, as a part of the school district's annual budget process, and update, as needed, the major maintenance, repair, and replacement needs, the estimates of expected costs, and any adjustments in funding the reserve.

(6) Availability for public inspection of the original plan, and all updated versions of the plan, at the office of the superintendent of the school district during the working hours of the school district.

(7) Provision in the school district's annual budget of a provision that states the total funding available in reserve for scheduled major maintenance, repair and replacement needs as specified in the updated plan, and an explanation if this amount is less than that specified in the updated plan. The reserve shall be maintained in the restricted account established pursuant to subdivision (b).

CHAPTER 514

An act to add Section 2310 to the Business and Professions Code, relating to medicine.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 2310 is added to the Business and Professions Code, to read:

2310. (a) If a physician and surgeon possesses a license or is otherwise authorized to practice medicine (1) in any state other than California or (2) by any agency of the federal government and that license or authority is suspended or revoked outright and is reported to the National Practitioners Data Bank, the physician and surgeon's certificate shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided

in subdivision (c). The division shall notify the physician and surgeon of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the division may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the medical profession.

(c) The issue of penalty shall be heard by an administrative law judge from the Medical Quality Panel sitting alone or with a panel of the division, in the discretion of the division. A physician and surgeon may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the physician and surgeon's license or authority to practice medicine is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon the showing to the administrative law judge or panel by the physician and surgeon that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded.

If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the physician and surgeon's license or authority to practice medicine, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a physician and surgeon who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a physician's and surgeon's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a physician and surgeon whose license has been surrendered whose only discipline is a medical staff disciplinary action at a federal hospital not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the physician and surgeon remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the physician and surgeon by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a physician and surgeon's certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the physician or surgeon may request that the hearing on the

penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

CHAPTER 515

An act to amend Sections 2073.3, 2073.5, and 2074 of, and to add Sections 2073.4 and 2073.7 to, the Fish and Game Code, relating to endangered species.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 2073.3 of the Fish and Game Code is amended to read:

2073.3. (a) The commission shall publish a notice in the California Regulatory Notice Register of the receipt of a petition prepared pursuant to Section 2072.3 by the department, or by an interested party and referred to the department, pursuant to Section 2073, or the commencement of an evaluation, to add a species to, remove a species from, or change the status of a species on, the list of endangered species or the list of threatened species pursuant to Section 2072.7. At a minimum, the notice shall include all of the following:

(1) The scientific and common name of the species.

(2) Habitat type, if that information is available in the petition.

(3) The location where interested persons can submit information to the department relating to the petitioned species.

(b) The commission shall notify interested persons pursuant to Section 2078, by mail, of the notices prepared pursuant to subdivision (a), and shall mail a copy of the notice to those persons.

SEC. 2. Section 2073.4 is added to the Fish and Game Code, to read:

2073.4. (a) A person may submit information to the department relating to the petitioned species during the evaluation of the petition pursuant to Section 2073.5. The information shall relate to the matters identified in Section 2072.3.

(b) Within 10 days after receiving information pursuant to subdivision (a), the department shall notify the petitioner regarding its content.

SEC. 3. Section 2073.5 of the Fish and Game Code is amended to read:

2073.5. (a) Within 90 days of receipt of the petition, the department shall evaluate the petition on its face and in relation to other relevant information the department possesses or receives, and

submit to the commission its written evaluation report with one of the following recommendations to the commission:

(1) Based upon the information contained in the petition, there is not sufficient information to indicate that the petitioned action may be warranted, and the petition should be rejected.

(2) Based upon the information contained in the petition, there is sufficient information to indicate that the petitioned action may be warranted, and the petition should be accepted and considered.

(b) Upon the request of the director, the commission may grant the department an extension of time, not to exceed 30 days, to allow the department additional time to further analyze and evaluate the petition and complete its evaluation report.

(c) The department's evaluation report shall include copies of, or a list of, all information submitted to the department pursuant to subdivision (a) of Section 2073.4 during its evaluation of the petition. If copies are not included, the report shall state where the listed information is available for review.

SEC. 4. Section 2073.7 is added to the Fish and Game Code, to read:

2073.7. A petitioner may amend a petition at any time prior to the beginning of the meeting held by the commission pursuant to Section 2074.2. However, if the commission determines that the amendment is substantive, the commission shall resubmit the petition to the department for review pursuant to Section 2073.5, publish notice of the amendment pursuant to Section 2073.3, and renotice or continue any hearing scheduled pursuant to Section 2074 in order to provide adequate opportunity for public comment.

SEC. 5. Section 2074 of the Fish and Game Code is amended to read:

2074. The commission shall schedule the petition for consideration at its next available meeting, but not sooner than 30 days after receipt of the petition and public release of the evaluation report, and distribute its pending agenda to interested persons pursuant to Section 2078. The commission also shall make the petition, evaluation report, and other materials received available for review.

SEC. 6. Upon appropriation of funds in the annual Budget Act from the Natural Resources Infrastructure Fund to the Fish and Game Commission for purposes of this act, the funds appropriated shall be used to carry out peer reviews in connection with the status reviews of candidate species conducted by the Department of Fish and Game pursuant to Section 2074.6.

CHAPTER 516

An act to amend Sections 110165, 110305, 110403, 110405, and 111635 of, and to repeal Section 110408 of, the Health and Safety Code, relating to food and drugs.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The medical technology industry, encompassing biotechnology and medical device and equipment manufacturing, is a rapidly growing California industry, and is critical to the future health of California's economy.

(b) This industry produces therapeutic drugs, medical devices, equipment, and diagnostic products transforming the practice of medicine and improving the lives of millions of patients around the world.

(c) The majority of the companies comprising this sector are small businesses who must invest heavily in research and development for several years before they market their first product, and who are heavily impacted by federal and state regulation.

(d) The businesses that comprise this industry are subject to rigorous health and safety regulation by both the U.S. Food and Drug Administration (FDA) and the Food and Drug Branch of the State Department of Health Services.

(e) The Legislature should, to the extent possible, seek to reasonably reform state laws and regulations with respect to this industry, with the goal being to eliminate duplicative procedures which add no value to consumers. Additional goals of the Legislature include to harmonize state and federal regulatory requirements, promote federal-state planning and information sharing, and assure that state health protection resources are used in an efficient manner that maximizes public health protection.

SEC. 2. Section 110165 of the Health and Safety Code is amended to read:

110165. It is unlawful for any person to use to his or her own advantage, or to reveal to any person other than to the director, officers, employees, or authorized agents of this department, or to the courts when relevant in any judicial proceeding under this part, any information acquired under authority of this part concerning any method or process which as a trade secret is entitled to protection. However, the department may reveal trade secret information in connection with the responsibilities of the department under this part, to any employee of the federal Food and Drug Administration

who is authorized in writing by the Chief of the Food and Drug Branch of the department or his or her designee to receive this type of information. The employee receiving this type of information shall be informed in writing of the prohibitions under this section, shall be informed in writing that the information provided contains trade secrets, as defined under state and federal law, and shall agree in writing to keep the information confidential.

SEC. 3. Section 110305 of the Health and Safety Code is amended to read:

110305. It is unlawful for any person to use on the label of any drug or device any representation or suggestion that an application with respect to the drug or device is effective under Section 111550 or that the drug or device complies with that section.

SEC. 4. Section 110403 of the Health and Safety Code is amended to read:

110403. Except as otherwise provided in Section 110405, it is unlawful for any person to advertise any drug or device represented to have any effect in any of the following conditions, disorders, or diseases:

(a) Appendicitis.
(b) Blood disorders.
(c) Bone or joint diseases.
(d) Kidney diseases or disorders.
(e) Cancer.
(f) Carbuncles.
(g) Diseases, disorders, or conditions of the eye.
(h) Diabetes.
(i) Diphtheria.
(j) Gallbladder diseases or disorders.
(k) Heart and vascular diseases.
(*l*) High blood pressure.
(m) Diseases or disorders of the ear or auditory apparatus, including hearing loss and deafness.
(n) Measles.
(o) Meningitis.
(p) Mental disease or mental retardation.
(q) Paralysis.
(r) Pneumonia.
(s) Poliomyelitis.
(t) Prostate gland disorders.
(u) Conditions of the scalp, affecting hair loss, or baldness.
(v) Alcoholism.
(w) Periodontal diseases.
(x) Epilepsy.
(y) Goiter.
(z) Endocrine disorders.
(aa) Sexual impotence.
(ab) Sinus infections.

(ac) Encephalitis.
(ad) Tumors.
(ae) Venereal diseases.
(af) Tuberculosis.
(ag) Ulcers of the stomach.
(ah) Varicose ulcers.
(ai) Scarlet fever.
(aj) Typhoid fever.
(ak) Whooping cough.
(al) Acquired immune deficiency syndrome (AIDS).
(am) AIDS-related complex (ARC).
(an) Diseases, disorders, or conditions of the immune system.

SEC. 5. Section 110405 of the Health and Safety Code is amended to read:

110405. An advertisement that is not unlawful under Section 110390 is not unlawful under Section 110403 if it is either one of the following:

(a) Disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of drugs or devices.

(b) An advertisement that a drug or device has a specific curative or therapeutic effect on a condition, disorder, or disease listed in Section 110403 if the drug or device is approved or cleared for marketing for that specific curative or therapeutic effect through any of the following means:

(1) A new drug application approved pursuant to Section 111500 or Section 505 of the federal act (21 U.S.C. Sec. 355).

(2) An abbreviated new drug application approved pursuant to Section 505 of the federal act (21 U.S.C. Sec. 355).

(3) A licensed biological product pursuant to Section 351 of the Public Health Service Act (42 U.S.C. Sec. 262).

(4) An over the counter drug that meets the requirements of Part 330 of Title 21 of the Code of Federal Regulations.

(5) A new animal drug application approved under Section 512 of the federal act (21 U.S.C. Sec. 360b).

(6) An abbreviated new animal drug application approved pursuant to Section 512 of the federal act (21 U.S.C. Sec. 360b).

(7) A new device application approved pursuant to Section 111550.

(8) A device premarket approval application approved under Section 515 of the federal act (21 U.S.C. Sec. 360e).

(9) A determination of substantial equivalence for a device pursuant to Section 513(f)(1) of the federal act (21 U.S.C. Sec. 360c(i)).

SEC. 6. Section 110408 of the Health and Safety Code is repealed.

SEC. 7. Section 111635 of the Health and Safety Code is amended to read:

111635. (a) Prior to issuing a license required by Section 111615, the department shall inspect each place of business.

(b) The department shall subsequently inspect the place of business of each person licensed under Section 111615 once every two years. The department shall conduct these inspections to determine ownership, adequacy of facilities, and personnel qualifications. Where the United States Food and Drug Administration has conducted an inspection of the place of business within the previous two years, the department shall use the information contained in the written documentation pertaining to that inspection rather than conducting its own inspection pursuant to this subdivision. The department may, if necessary, inspect to obtain information not included or not sufficiently clear in the United States Food and Drug Administration written documentation pertaining to the inspection and needed to determine ownership, adequacy of facilities, personnel qualifications, and compliance with this part.

(c) The department may, in lieu of all or part of any inspection required under this section, use information from audits conducted pursuant to the provisions of the International Standards Organization (ISO) 9000 series or European (EN) 46000 series quality system standards, or other information identified by the department by regulation.

CHAPTER 517

An act to amend Sections 11737 and 11753.1 of the Insurance Code, relating to insurance.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 11737 of the Insurance Code is amended to read:

11737. (a) The commissioner may disapprove a rate if the insurer fails to comply with the filing requirements under Section 11735.

(b) If the commissioner believes that rates may violate any of the requirements of this article, he or she shall call a hearing prior to any disapproval. The commissioner shall disapprove a rate if he or she finds that the rate would, if continued in use, tend to impair or threaten the solvency of an insurer or tend to create a monopoly in the market pursuant to Section 11732.

(c) Every insurer or rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. If the insurer or rating organization fails to grant or reject the request within 30 days, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of the insurer or rating organization on the request may, within 30 days after written notice of the action, appeal to the commissioner who, after a hearing held within 60 days from the date on which the party requests the appeal, or longer upon agreement of the parties and not less than 10 days' written notice to the appellant and to the insurer or rating organization, may affirm, modify, or reverse that action. If the commissioner has information on the subject from which the appeal is taken and believes that a reasonable basis for the appeal does not exist or that the appeal is not made in good faith, the commissioner may deny the appeal without a hearing. The denial shall be in writing and shall set forth the basis for the denial and shall be served on all parties.

(d) If the commissioner disapproves a rate, the commissioner shall issue an order specifying in what respects it fails to meet the requirements of this article and stating when within a reasonable period thereafter that rate shall be discontinued for any policy issued or renewed after a date specified in the order. The order shall be issued within 30 days after the close of the hearing or within such reasonable time extension as the commissioner may fix. The order may include a provision for premium adjustment for the period after the effective date of the order for policies in effect on that date.

(e) Whenever an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall on request of the insurer specify interim rates for the insurer that are adequate to protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by him or her. When new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds of less than ten dollars ($10) per policyholder shall not be required.

SEC. 2. Section 11753.1 of the Insurance Code is amended to read:

11753.1. (a) Any person aggrieved by any decision, action, or omission to act of a rating organization may request that the rating organization reconsider the decision, action, or omission. If the request for reconsideration is rejected or is not acted upon within 30 days by the rating organization, the person requesting reconsideration may, within a reasonable time, appeal from the decision, action, or omission of the rating organization. The appeal shall be made to the commissioner by filing a written complaint and

request for a hearing specifying the grounds relied upon. If the commissioner has information on the subject appealed from and believes that probable cause for the appeal does not exist or that the appeal is not made in good faith, the commissioner may deny the appeal without a hearing. The commissioner shall otherwise hold a hearing to consider and determine the matter presented by the appeal.

(b) Any insurer adopting a change in the classification assignment of an employer that results in an increased premium shall notify the employer in writing, or where the insurance was transacted through an insurance agent or broker, the insurer shall notify the agent or broker who shall notify the employer in writing of the change and the reasons for the change. Any employer receiving this notice shall have the right to request reconsideration and appeal the reclassification pursuant to this section. The notice required by this section shall inform the employer of his or her rights pursuant to this section. No notification shall be required when the change is a result of a regulation adopted by the Department of Insurance or other action by or under the authority of the commissioner.

An insurer shall provide written notification of the revised classification assignment to an employer within 30 days after adoption.

(c) On or before January 1, 1999, the commissioner shall adopt regulations to implement the appeals processes set forth in this section and subdivision (c) of Section 11737 and consolidate these processes into the appropriate section of the administrative regulations governing the powers and duties of the commissioner.

CHAPTER 518

An act to add Sections 39619 and 39619.5 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 39619 is added to the Health and Safety Code, to read:

39619. The Legislature hereby finds and declares all of the following:

(a) Recent scientific studies have documented significant adverse public health effects associated with exposure to airborne fine particles that are smaller than 2.5 microns (PM 2.5).

(b) Federal ambient air quality standards for the control of particles smaller than 10 microns in diameter (PM 10) will require additional emission controls in California.

(c) California's existing ambient air quality monitoring program for PM 10 and PM 2.5 provides inadequate scientific information with regard to the level of public exposure to, and public health risk from, airborne fine particles, and therefore must be expanded and improved to evaluate priorities and establish appropriate control strategies.

(d) Current proposals for required monitoring of PM 2.5 by the Environmental Protection Agency may not be appropriate for properly measuring species of pollutants that comprise the principal components of airborne fine particles within the state.

(e) California needs to develop an airborne fine particle monitoring program that reflects the specific nature of California's fine particle air pollution problem and develops data suitable for use in exposure evaluations.

(f) California should use the most accurate methods available in the fine particle monitoring program that are appropriate for use in California and should strive to avoid duplication of the federal air monitoring program whenever possible.

SEC. 2. Section 39619.5 is added to the Health and Safety Code, to read:

39619.5. (a) The state board shall develop and conduct an expanded and revised program of monitoring of airborne fine particles smaller than 2.5 microns in diameter (PM 2.5). The program shall be designed to accomplish all of the following:

(1) The monitoring method selected shall be capable of accurately representing the spectrum of compounds that comprise PM 2.5 in the atmosphere of regions where monitoring is conducted, including nitrates and other inorganic compounds, as well as carbonaceous materials.

(2) To the extent feasible, the state board shall consider approved federal particulate methods in selecting a monitoring method for the program.

(3) The monitoring network used in the program shall site monitors so as to characterize population exposure, background conditions, and transport influence, and attain any other objective identified by the state board as necessary to understand conditions and to provide information for the development of control strategies.

(4) Portable monitors shall be used in locations not now monitored for PM 10, but where elevated PM 2.5 might be expected.

(5) During the initial two years of expanded monitoring, PM 2.5 monitoring shall be done at one or more of the highest level PM 10 sites in any region that violates the federal ambient air quality standard for PM 10, to enable a determination of the correlation between levels of PM 10 and PM 2.5.

(6) In regions where ambient source characterization studies for PM 2.5 have not been completed, the state board shall work with the district to develop and conduct those studies.

(b) The state board shall report annually by January 1 to the Legislature on the status and results of the airborne fine particle air pollution monitoring program.

CHAPTER 519

An act to amend Section 40727 of, and to add Section 40727.2 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 40727 of the Health and Safety Code is amended to read:

40727. (a) Before adopting, amending, or repealing a rule or regulation, the district board shall make findings of necessity, authority, clarity, consistency, nonduplication, and reference, as defined in this section, based upon information developed pursuant to Section 40727.2, information in the rulemaking record maintained pursuant to Section 40728, and relevant information presented at the hearing.

(b) As used in this section, the following terms have the following meaning:

(1) "Necessity" means that a need exists for the regulation, or for its amendment or repeal, as demonstrated by the record of the rulemaking authority.

(2) "Authority" means that a provision of law or of a state or federal regulation permits or requires the regional agency to adopt, amend, or repeal the regulation.

(3) "Clarity" means that the regulation is written or displayed so that its meaning can be easily understood by the persons directly affected by it.

(4) "Consistency" means that the regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.

(5) "Nonduplication" means that a regulation does not impose the same requirements as an existing state or federal regulation unless a district finds that the requirements are necessary or proper to execute the powers and duties granted to, and imposed upon, a district.

(6) "Reference" means the statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

SEC. 2. Section 40727.2 is added to the Health and Safety Code, to read:

40727.2. (a) In complying with Section 40727, the district shall prepare a written analysis as required by this section. In the analysis, the district shall identify all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting best available control technology for new or modified equipment, that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the district. The analysis shall also identify any of that district's existing or proposed rules and regulations that apply to the same equipment or source type, and all air pollution control requirements and guidelines that apply to the same equipment or source type and of which the district has been informed pursuant to subdivision (b). The analysis shall be in a format that minimizes paperwork and, at the option of the district, may be in matrix form.

(b) Within 60 days from the date of a district's publication, pursuant to Section 40923, of the list of regulatory measures proposed for adoption in the following year, any person may inform the district of any existing federal or state air pollution control requirement or guideline or proposed or existing district air pollution control requirement or guideline that applies to the same type of source or equipment in that district as any proposed new or amended district rule or regulation on that district's list of regulatory measures. If any person informs the district of any requirement or guideline that does not apply to the same type of source or equipment, the district shall notify the person to that effect and shall not be required to review that requirement or guideline.

(c) The analysis prepared pursuant to subdivision (a) shall compare the elements of each of the identified air pollution control requirements to the corresponding element or elements of the district's proposed new or amended rule or regulation.

(d) Air pollution control requirement elements to be reviewed pursuant to subdivision (c) are all of the following:

(1) Averaging provisions, units, and any other pertinent provisions associated with emission limits.

(2) Operating parameters and work practice requirements.

(3) Monitoring, reporting, and recordkeeping requirements, including test methods, format, content, and frequency.

(4) Any other element that the district determines warrants review.

(e) If one or more elements of a district's proposed new or amended rule or regulation differs from corresponding elements of any existing air pollution control requirement or guideline applicable

to the same equipment or source type, the analysis prepared pursuant to subdivision (a) shall note the difference or differences.

(f) The public hearing notice given to the state board pursuant to subdivision (b) of Section 40725, and any notice mailed to interested persons, shall include a statement indicating that the analysis required by this section has been prepared, and shall provide the name, address, and telephone number of a district officer from whom copies may be requested. The analysis required by this section shall be provided to the public upon request.

(g) If a district's proposed new or amended rule or regulation does not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements, or if the proposed new or amended rule or regulation is a verbatim adoption or incorporation by reference of a federal New Source Performance Standard adopted pursuant to Section 111 of the Clean Air Act (42 U.S.C. 7411) or an airborne toxic control measure adopted by the state board pursuant to Section 39666, a district may elect to comply with subdivision (a) by preparing an alternative analysis demonstrating that the proposed new or amended rule or regulation falls within one or more of the categories specified in this subdivision.

(h) Nothing in this section limits the existing authority of districts to determine the form, content, and stringency of their rules and regulations. In implementing this section, it is the intent of the Legislature that the districts retain their existing authority and flexibility to tailor their air pollution emission control requirements to local circumstances.

(i) For purposes of this section, a district rule or regulation shall be considered "proposed" if the rule or regulation has been made available to the general public in connection with a request for comments.

(j) To the extent that the district board determines that there are additional costs imposed by this section, the district board shall recover those additional costs through the imposition of fees on regulated entities.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 520

An act to amend Sections 25244.14, 25244.15, 25244.16, 25244.18, 25244.19, 25244.20, 25244.21, 25244.22, and 25244.23 of, and to repeal Section 25244.24 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 25244.14 of the Health and Safety Code is amended to read:

25244.14. For purposes of this article, the following definitions apply:

(a) "Appropriate local agency" means a county, city, or regional association that has adopted a hazardous waste management plan pursuant to Article 3.5 (commencing with Section 25135).

(b) "Hazardous waste management approaches" means approaches, methods, and techniques of managing the generation and handling of hazardous waste, including source reduction, recycling, and the treatment of hazardous waste.

(c) "Hazardous waste management performance report" or "report" means the report required by subdivision (b) of Section 25244.20 to document and evaluate the results of hazardous waste management practices.

(d) (1) "Source reduction" means one of the following:

(A) Any action that causes a net reduction in the generation of hazardous waste.

(B) Any action taken before the hazardous waste is generated that results in a lessening of the properties which cause it to be classified as a hazardous waste.

(2) "Source reduction" includes, but is not limited to, all of the following:

(A) "Input change," which means a change in raw materials or feedstocks used in a production process or operation so as to reduce, avoid, or eliminate the generation of hazardous waste.

(B) "Operational improvement," which means improved site management so as to reduce, avoid, or eliminate the generation of hazardous waste.

(C) "Production process change," which means a change in a process, method, or technique which is used to produce a product or a desired result, including the return of materials or their components, for reuse within the existing processes or operations, so as to reduce, avoid, or eliminate the generation of hazardous waste.

(D) "Product reformulation," which means changes in design, composition, or specifications of end products, including product

substitution, so as to reduce, avoid, or eliminate the generation of hazardous waste.

(3) "Source reduction" does not include any of the following:

(A) Actions taken after a hazardous waste is generated.

(B) Actions that merely concentrate the constituents of a hazardous waste to reduce its volume or that dilute the hazardous waste to reduce its hazardous characteristics.

(C) Actions that merely shift hazardous wastes from one environmental medium to another environmental medium.

(D) Treatment.

(e) "Source reduction evaluation review and plan" or "review and plan" means a review conducted by the generator of the processes, operations, and procedures in use at a generator's site, in accordance with the format established by the department pursuant to subdivision (a) of Section 25244.16, and that does both of the following:

(1) Determines any alternatives to, or modifications of, the generator's processes, operations, and procedures that may be implemented to reduce the amount of hazardous waste generated.

(2) Includes a plan to document and implement source reduction measures for the hazardous wastes specified in paragraph (1) that are technically feasible and economically practicable for the generator, including a reasonable implementation schedule.

(f) "SIC Code" has the same meaning as defined in Section 25501.

(g) "Hazardous waste," "person," "recycle," and "treatment" have the same meaning as defined in Article 2 (commencing with Section 25110).

SEC. 2. Section 25244.15 of the Health and Safety Code is amended to read:

25244.15. (a) The department shall establish a program for hazardous waste source reduction pursuant to this article.

(b) The department shall coordinate the activities of all state agencies with responsibilities and duties relating to hazardous waste and shall promote coordinated efforts to encourage the reduction of hazardous waste. Coordination between the program and other relevant state agencies and programs shall, to the fullest extent possible, include joint planning processes and joint research and studies.

(c) The department shall adopt regulations to carry out this article.

(d) (1) Except as provided in paragraph (3), this article applies only to generators who, by site, routinely generate, through ongoing processes and operations, more than 12,000 kilograms of hazardous waste in a calendar year, or more than 12 kilograms of extremely hazardous waste in a calendar year.

(2) The department shall adopt regulations to establish procedures for exempting generators from the requirements of this

article where the department determines that no source reduction opportunities exist for the generator.

(3) Notwithstanding paragraph (1), this article does not apply to any generator whose hazardous waste generating activity consists solely of receiving offsite hazardous wastes and generating residuals from the processing of those hazardous wastes.

(e) It is the purpose of this article to reduce the generation of hazardous waste in California by 5 percent per year from the year 1993 to the year 2000. On or before January 1, 2000, the department shall recommend to the Legislature the adoption of a new annual waste reduction goal.

SEC. 3. Section 25244.16 of the Health and Safety Code is amended to read:

25244.16. The department shall do both of the following:

(a) Adopt a format to be used by generators for completing the review and plan required by Section 25244.19, and the report required by Section 25244.20. The format shall include at least all of the factors the generator is required to include in the review and plan and the report. The department may include any other factor determined by the department to be necessary to carry out this article. The adoption of a format pursuant to this subdivision is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Establish a data and information system to be used by the department for developing the categories of generators specified in Section 25244.18, and for processing and evaluating the source reduction and other hazardous waste management information submitted by generators pursuant to Section 25244.18. In establishing the data and information system, the department shall do all of the following:

(1) Establish methods and procedures for appropriately processing or managing hazardous waste source reduction and management information.

(2) Use the data management expertise, resources, and forms of already established environmental protection programs, to the extent practicable.

(3) Establish computerized data retrieval and data processing systems, including safeguards to protect trade secrets designated pursuant to Section 25244.23.

(4) Identify additional data and information needs of the program.

SEC. 4. Section 25244.18 of the Health and Safety Code is amended to read:

25244.18. (a) On or before September 15, 1991, and every two years thereafter, the department shall select at least two categories of generators by SIC Code with potential for source reduction, and, for each category, shall do all of the following:

(1) Request that selected generators in the category provide the department, on a timely basis, with a copy of the generator's

completed review and plan and with a copy of the generator's completed report.

(2) Examine the review and plan and the report of selected generators in the category.

(3) Ensure that the selected generators in that category comply with Sections 25244.19 and 25244.20.

(4) Identify successful source reduction and other hazardous waste management approaches employed by generators in the category and disseminate information concerning those approaches to generators within the category.

(b) In carrying out subdivision (a), the department shall not disseminate information determined to be a trade secret pursuant to Section 25244.23.

(c) The department or the unified program agency may request from any generator, and the generator shall provide within 30 days from the date of the request, a copy of the generator's review and plan or report. The department or the unified program agency may evaluate any of those documents submitted to the department or the unified program agency to determine whether it satisfies the requirements of this article.

(d) (1) If the department or the unified program agency determines that a generator has not completed the review and plan in the manner required by Section 25244.19, or the report in the manner required by Section 25244.20, the department or the unified program agency shall provide the generator with a notice of noncompliance, specifying the deficiencies in the review and plan or report identified by the department. If the department or the unified program agency finds that the review and plan does not comply with Section 25244.19, the department or the unified program agency shall consider the review and plan to be incomplete. A generator shall file a revised review and plan or report correcting the deficiencies identified by the department or the unified program agency within 60 days from the date of the receipt of the notice. The department or the unified program agency may grant, in response to a written request from the generator, an extension of the 60-day deadline, for cause, except that the department or the unified program agency shall not grant that extension for more than an additional 60 days.

(2) If a generator fails to submit a revised review and plan or report complying with the requirements of this article within the required period, or if the department or unified program agency determines that a generator has failed to implement the measures included in the generator's review and plan for reducing the generator's hazardous waste, in accordance with Section 25244.19, the department or the unified program agency may impose civil penalties pursuant to Section 25187, in an amount not to exceed one thousand dollars ($1,000) for each day the violation of this article continues, notwithstanding Section 25189.2, seek an order directing

compliance pursuant to Section 25181, or enter into a consent agreement or a compliance schedule with the generator.

(e) If a generator fails to implement a measure specified in the review and plan pursuant to paragraph (5) of subdivision (b) of Section 25244.19, the generator shall not be deemed to be in violation of Section 25244.19 for not implementing the selected measure if the generator does both of the following:

(1) The generator finds that, upon further analysis or as a result of unexpected consequences, the selected measure is not technically feasible or economically practicable, or if the selected approach has resulted in any of the following:

(A) An increase in the generation of hazardous waste.

(B) An increase in the release of hazardous chemical contaminants to other media.

(C) Adverse impacts on product quality.

(D) A significant increase in the risk of an adverse impact to human health or the environment.

(2) The generator revises the review and plan to comply with the requirements of Section 25244.19.

(f) When taking enforcement action pursuant to this article, the department or the unified program agency shall not judge the appropriateness of any decisions or proposed measures contained in a review and plan or report, but shall only determine whether the review and plan or report is complete, prepared, and implemented in accordance with this article.

(g) In addition to the unified program agency, an appropriate local agency that has jurisdiction over a generator's site may request from the generator, and the generator shall provide within 30 days from the date of that request, a copy of the generator's current review and plan and report.

SEC. 5. Section 25244.19 of the Health and Safety Code is amended to read:

25244.19. (a) On or before September 1, 1991, and every four years thereafter, each generator shall conduct a source reduction evaluation review and plan pursuant to subdivision (b).

(b) Except as provided in subdivision (c), the source reduction evaluation review and plan required by subdivision (a) shall be conducted and completed for each site pursuant to the format adopted pursuant to subdivision (a) of Section 25244.16 and shall include, at a minimum, all of the following:

(1) The name and location of the site.

(2) The SIC Code of the site.

(3) Identification of all routinely generated hazardous waste streams that result from ongoing processes or operations that have a yearly volume exceeding 5 percent of the total yearly volume of hazardous waste generated at the site, or, for extremely hazardous waste, 5 percent of the total yearly volume generated at the site. For purposes of this paragraph, a hazardous waste exceeds 5 percent of

the total yearly volume, and is subject to this article, if it is routinely generated on an ongoing basis and meets any of the following criteria:

(A) It is a hazardous waste stream processed in a wastewater treatment unit that discharges to a publicly owned treatment works or under a national pollutant discharge elimination system (NPDES) permit, as specified in the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1251 and following), and its weight before treatment exceeds 5 percent of the weight of the total yearly volume at the site.

(B) It is a hazardous waste stream that is not processed in a wastewater treatment unit and its weight exceeds 5 percent of the weight of the total yearly volume at the site, less the weight of any hazardous waste stream identified in subparagraph (A).

(C) It is a hazardous waste stream that annually weighs 600 kilograms or more and its weight exceeds 5 percent of the weight of the total yearly volume at the site, less the weight of any hazardous waste stream identified in subparagraph (A).

(D) It is an extremely hazardous waste stream that annually weighs 0.6 kilograms or more and its weight exceeds 5 percent of the weight of the total yearly volume at the site, less the weight of any hazardous waste stream identified in subparagraph (A).

(4) For each hazardous waste stream identified in paragraph (3), the review and plan shall include all of the following information:

(A) An estimate of the quantity of hazardous waste generated.

(B) An evaluation of source reduction approaches available to the generator that are potentially viable. The evaluation shall consider at least all of the following source reduction approaches:

(i) Input change.

(ii) Operational improvement.

(iii) Production process change.

(iv) Product reformulation.

(5) A specification of, and a rationale for, the technically feasible and economically practicable source reduction measures that will be taken by the generator with respect to each hazardous waste stream identified in paragraph (3). The review and plan shall fully document any statement explaining the generator's rationale for rejecting any available source reduction approach identified in paragraph (4).

(6) An evaluation, and, to the extent practicable, a quantification, of the effects of the chosen source reduction method on emissions and discharges to air, water, or land.

(7) A timetable for making reasonable and measurable progress towards implementation of the selected source reduction measures specified in paragraph (5).

(8) Certification pursuant to subdivision (d).

(9) Any generator subject to this article shall include in its source reduction evaluation review and plan four-year numerical goals for reducing the generation of hazardous waste streams through the

approaches provided for in subparagraph (B) of paragraph (4), based upon its best estimate of what is achievable in that four-year period, as follows:

(A) For those generators and waste streams subject to this program prior to January 1, 1993, the four-year numerical goals shall be included in the plan which is required to be prepared by September 1, 1995, and every four years thereafter, pursuant to subdivision (a).

(B) Any generator who is subject to this program pursuant to paragraph (3) of subdivision (d) of Section 25244.15, and was not subject to this program before January 1, 1993, shall prepare its source reduction evaluation review and plan, or compliance check list, as provided in paragraph (3) of subdivision (d) of Section 25244.15, on September 1, 1993, and every four years thereafter.

(10) A summary progress report that briefly summarizes and, to the extent practicable, quantifies, in a manner that is understandable to the general public, the results of implementing the source reduction methods identified in the generator's review and plan for each waste stream addressed by the previous plan over the previous four years. The report shall also include an estimate of the amount of reduction that the generator anticipates will be achieved by the implementation of source reduction methods during the period between the preparation of the review and plan and the preparation of the generator's next review and plan. Notwithstanding any other provision of this section, the summary progress report required to be prepared pursuant to this paragraph shall be submitted to the department on or before September 1, 1999, and every four years thereafter.

(c) If a generator owns or operates multiple sites with similar processes, operations, and waste streams, the generator may prepare a single multisite review and plan addressing all of these sites.

(d) Every review and plan conducted pursuant to this section shall be submitted by the generator for review and certification by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code and who has demonstrated expertise in hazardous waste management, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who is registered pursuant to Section 25570.3 and who has demonstrated expertise in hazardous waste management. The engineer, individual, or environmental assessor shall certify the review and plan only if the review and plan meet all of the following requirements:

(1) The review and plan addresses each hazardous waste stream identified pursuant to paragraph (3) of subdivision (b).

(2) The review and plan addresses the source reduction approaches specified in subparagraph (B) of paragraph (4) of subdivision (b).

(3) The review and plan clearly sets forth the measures to be taken with respect to each hazardous waste stream for which source reduction has been found to be technically feasible and economically practicable, with timetables for making reasonable and measurable progress, and properly documents the rationale for rejecting available source reduction measures.

(4) The review and plan does not merely shift hazardous waste from one environmental medium to another environmental medium by increasing emissions or discharges to air, water, or land.

(e) At the time a review and plan is submitted to the department or the unified program agency, the generator shall certify that the generator has implemented, is implementing, or will be implementing, the source reduction measures identified in the review and plan in accordance with the implementation schedule contained in the review and plan. A generator may determine not to implement a measure selected in paragraph (5) of subdivision (b) only if the generator determines, upon conducting further analysis or due to unexpected circumstances, that the selected measure is not technically feasible or economically practicable, or if attempts to implement that measure reveal that the measure would result in, or has resulted in, any of the following:

(1) An increase in the generation of hazardous waste.

(2) An increase in the release of hazardous chemicals to other environmental media.

(3) Adverse impacts on product quality.

(4) A significant increase in the risk of an adverse impact to human health or the environment.

(f) If the generator elects not to implement the review and plan, including, but not limited to, a selected measure pursuant to subdivision (e), the generator shall amend its review and plan to reflect that election and include in the review and plan proper documentation identifying the rationale for that election.

SEC. 6. Section 25244.20 of the Health and Safety Code is amended to read:

25244.20. (a) On or before September 1, 1991, and every four years thereafter, each generator shall prepare a hazardous waste management performance report documenting hazardous waste management approaches implemented by the generator.

(b) Except as provided in subdivision (d), the hazardous waste management performance report required by subdivision (a) shall be prepared for each site in accordance with the format adopted pursuant to subdivision (a) of Section 25244.16 and shall include all of the following:

(1) The name and location of the site.

(2) The SIC Code for the site.

(3) All of the following information for each waste stream identified pursuant to paragraph (3) of subdivision (b) of Section 25244.19:

(A) An estimate of the quantity of hazardous waste generated and the quantity of hazardous waste managed, both onsite and offsite, during the current reporting year and the baseline year, as specified in subdivision (c).

(B) An abstract for each source reduction, recycling, or treatment technology implemented from the baseline year through the current reporting year, if the reporting year is different from the baseline year.

(C) A description of factors during the current reporting year that have affected hazardous waste generation and onsite and offsite hazardous waste management since the baseline year, including, but not limited to, any of the following:

(i) Changes in business activity.

(ii) Changes in waste classification.

(iii) Natural phenomena.

(iv) Other factors that have affected either the quantity of hazardous waste generated or onsite and offsite hazardous waste management requirements.

(4) The certification of the report pursuant to subdivision (e).

(c) For purposes of subdivision (b), the following definitions apply:

(1) The current reporting year is the calendar year immediately preceding the year in which the report is to be prepared.

(2) The baseline year is either of the following, whichever is applicable:

(A) For the initial report, the baseline year is the calendar year selected by the generator for which substantial hazardous waste generation, or onsite or offsite management data is available, prior to 1991, except the generator may select 1990 as the baseline year. If the generator selects 1990 as the baseline year for the initial report, the information required pursuant to paragraph (3) of subdivision (b) for the initial report shall be provided for the 1990 calendar year only.

(B) For all subsequent reports, the baseline year is the current reporting year of the immediately preceding report.

(d) If a generator owns or operates multiple sites with similar processes, operations, and waste streams, the generator may prepare a single multisite report addressing all of these sites.

(e) Every report completed pursuant to this section shall be submitted by the generator for review and certification by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code and who has demonstrated expertise in hazardous waste management, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who is registered pursuant to Section 25570.3 and who has demonstrated expertise in hazardous waste management. The engineer, individual, or environmental assessor shall certify the report only if the report identifies factors

that affect the generation and onsite and offsite management of hazardous wastes and summarizes the effect of those factors on the generation and onsite and offsite management of hazardous wastes.

SEC. 7. Section 25244.21 of the Health and Safety Code is amended to read:

25244.21. (a) Every generator shall retain the original of the current review and plan and report, shall maintain a copy of the current review and plan and report at each site, or, for a multisite review and plan or report, at a central location, and upon request, shall make it available to any authorized representative of the department or the unified program agency conducting an inspection pursuant to Section 25185. If a generator fails, within five days, to make available to the inspector the review and plan or report, the department, the unified program agency, or any authorized representative of the department, or of the unified program agency, conducting an inspection pursuant to Section 25185, shall, if appropriate, impose a civil penalty pursuant to Section 25187, in an amount not to exceed one thousand dollars ($1,000) for each day the violation of this article continues, notwithstanding Section 25189.2.

(b) If a generator fails to respond to a request for a copy of its review and plan or report made by the department or a unified program agency pursuant to subdivision (c) of Section 25244.18, or by a local agency pursuant to subdivision (g) of Section 25244.18, within 30 days from the date of the request, the department or unified program agency shall, if appropriate, assess a civil penalty pursuant to Section 25187, in an amount not to exceed one thousand dollars ($1,000) for each day the violation of this article continues, notwithstanding Section 25189.2.

(c) (1) Any person may request the department to certify that a generator is in compliance with this article by having the department certify that the generator has properly completed the review and plan and report required pursuant to Sections 25244.19 and 25244.20. The department shall respond within 60 days to a request for certification. Upon receiving a request for certification, the department shall request from the generator, who is the subject of the request, a copy of the generator's review and plan and report, pursuant to subdivision (c) of Section 25244.19, if the department does not have these documents. The department shall forward a copy of the review and plan and report to the person requesting certification, within 10 days from the date that the department receives the request for certification or receives the review and plan and report, whichever is later. The department shall protect trade secrets in accordance with Section 25244.23 in a review and plan or report, requested to be released pursuant to this subdivision.

(2) This subdivision does not prohibit any person from directly requesting from a generator a copy of the review and plan or report. Solely for the purposes of responding to a request pursuant to this subdivision, the department shall deem the review and plan or report

to be a public record subject to Section 25152.5, and shall act in compliance with that section.

SEC. 8. Section 25244.22 of the Health and Safety Code is amended to read:

25244.22. Commencing July 1, 1994, and every other year thereafter, the director shall prepare a report of the department's operations and activities in carrying out this article. The director may include this report within the report required pursuant to Section 25171. This report shall include, but not be limited to, all of the following information:

(a) An evaluation of hazardous waste source reduction progress in this state.

(b) Recommendations for legislation.

(c) Identification of any state, federal, or private economic and financial incentives that can best accelerate and maximize the research and development of source reduction and other hazardous waste management technologies and approaches.

(d) The status, funding, and results of all research projects.

(e) A detailed summary of the extent to which the statewide goal of 5 percent per year reduction of the generation of hazardous wastes, pursuant to subdivision (e) of Section 25244.15, has been attained, and a detailed summary of the extent to which different categories of facilities have attained the numerical goals established pursuant to paragraph (9) of subdivision (b) of Section 25244.19. This summary shall include an evaluation by the department of the reasons why these goals have or have not been attained, including an evaluation of the impact of economic growth or decline and changes in production patterns, and a list of appropriate recommendations designed to ensure attainment of these goals.

SEC. 9. Section 25244.23 of the Health and Safety Code is amended to read:

25244.23. (a) (1) The department shall adopt regulations to ensure that trade secrets designated by a generator in all or a portion of the review and plan or the report required by this article are utilized by the director, the department, the unified program agency, or the appropriate local agency only in connection with the responsibilities of the department pursuant to this article, and that those trade secrets are not otherwise disseminated by the director, the department, the unified program agency, or any authorized representative of the department, or the appropriate local agency, without the consent of the generator.

(2) Any information subject to this section shall be made available to governmental agencies for use in making studies and for use in judicial review or enforcement proceedings involving the person furnishing the information.

(3) As provided by Section 25159.5, the regulations adopted pursuant to this subdivision shall conform with the corresponding trade secret regulations adopted by the Environmental Protection

Agency pursuant to the federal act, except that the regulations adopted by the department may be more stringent or more extensive than the federal trade secret regulations.

(4) "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that is not patented, that is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and that gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(b) The department, the unified program agency, and the appropriate local agency shall protect from disclosure any trade secret designated by the generator pursuant to this section. The department shall make available information concerning source reduction approaches that have proved successful, and that do not constitute a trade secret, when carrying out subdivision (c) of Section 25244.17 and to subdivision (a) of Section 25244.18.

(c) This section does not permit a generator to refuse to disclose the information required pursuant to this article to the department, the unified program agency, or the appropriate local agency, an officer or employee of the department, the unified program agency, or the appropriate local agency, in connection with the official duties of that officer or employee under this article.

(d) Any officer or employee of the department, the unified program agency, or the appropriate local agency, or any other person, who, because of his or her employment or official position, has possession of, or has access to, confidential information, and who, knowing that disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment.

SEC. 10. Section 25244.24 of the Health and Safety Code is repealed.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

CHAPTER 521

An act to add and repeal Section 10061.3 of the Public Utilities Code, relating to municipally owned utilities.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 10061.3 is added to the Public Utilities Code, to read:

10061.3. (a) Notwithstanding any other provision of law, the City of West Covina may sell for just compensation the entire water utility of that city pursuant to this article where part of the utility is inside and part is outside the city boundaries. Prior to approval of such a sale, the legislative body shall provide by mail a notice and ballot to the customers of the water utility within the City of West Covina. The notice shall contain sufficient information to assist the customers in making a decision, including basic terms of a sale, as well as any anticipated impacts on customer rates. The ballot shall contain a single question to ascertain the customer's approval or disapproval of the proposed sale. The ballot shall be returned to the City of West Covina by a specified date not less than 30 days from the date of the notice. The ballot shall contain sufficient safeguards to protect against fraud or duplicate ballots. For purposes of this mailed ballot election, each customer shall have one vote, unweighted by meter size, number of connections, water usage, or any other factor. At the conclusion of the election period, the legislative body shall conduct a public hearing for the purpose of tallying the ballots received. If a majority of ballots received are cast in favor of the proposed sale, the city may sell the utility. If a majority of ballots received are cast in opposition to the proposed sale, the city may not sell the utility.

(b) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that date.

SEC. 2. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable, within the meaning of Section 16 of Article IV of the California Constitution, because of unique circumstances applicable to the City of West Covina and not generally applicable. The City of West Covina owns a water utility which the city council finds is no longer in the public interest to own and operate. The water utility provides service inside and outside the city to a substantial number of

customers. The city therefore desires to sell the water utility but believes that statutory ambiguity may prevent the city from selling that portion of the water utility inside the city without an election of city voters, which does not serve the needs of all water customers. In order to clearly state the law with respect to the City of West Covina, a special statute is needed and a general statute cannot be made applicable.

CHAPTER 522

An act to amend Sections 2105, 2106, 2107, 2109, 2112, and 2115 of the Fish and Game Code, relating to endangered and threatened species, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. The Legislature finds and declares both of the following:

(a) That a greater commitment of resources is required in California if the people are to resolve conflicts between protection of endangered plant and animal species and economic activities.

(b) That by implementing the recovery strategy program of Article 7 (commencing with Section 2105) of Chapter 1.5 of Division 3 of the Fish and Game Code, the state can work toward an overall public and private effort to conserve species and habitat while also resolving economic and land use conflicts.

SEC. 2. Section 2105 of the Fish and Game Code is amended to read:

2105. The department shall develop and implement a recovery strategy pilot program for the Greater Sandhill crane (Grus canadensis tabida). The objective of this pilot program is the development of recovery strategies with the goal that the regulations or other protections for species listed pursuant to this chapter are not necessary.

SEC. 3. Section 2106 of the Fish and Game Code is amended to read:

2106. The commission, based on recommendations from the department, may identify four additional species that are listed as candidate, threatened, or endangered for which recovery strategies shall be developed and implemented. A candidate species may be included in the recovery strategy program only if the petitioner for listing concurs.

SEC. 4. Section 2107 of the Fish and Game Code is amended to read:

2107. (a) For each species identified pursuant to Sections 2105 and 2106, the department shall assemble a recovery strategy team consisting of, but not limited to, department personnel, other state agency personnel if found by the department to be appropriate, federal agency personnel to the extent permitted by federal law if found by the department to be appropriate, representatives of affected local governments, representatives of affected landowners, and representatives of environmental groups, as well as persons who possess scientific expertise.

(b) Each recovery team shall work collaboratively to aid the department in developing the recovery strategy for that species for which the recovery team is assembled.

(c) The department shall consider information from all persons likely to be affected by the implementation of a recovery strategy and from persons knowledgeable in those subject areas pertinent to the species' recovery in developing the recovery strategy for each species.

SEC. 5. Section 2109 of the Fish and Game Code is amended to read:

2109. (a) The department shall promptly commence preparation of a recovery strategy for each of the species identified pursuant to Sections 2105 and 2106.

(b) Within 12 months of the identification of a species included in the recovery strategy pilot program, the department shall submit a recovery strategy for that species to the commission for review and approval.

(c) A recovery strategy for a species shall contain all of the following information:

(1) An explanation of scientific knowledge and assumptions regarding the biology, habitat requirements, and threats to the existence of the species.

(2) An explanation of interim and long-term recovery goals. The interim goals shall be specifically stated. The long-term goals may be specifically stated if the department determines that adequate information exists to reasonably identify long-term goals; if not, the strategy may contain general long-term goals that will be clarified as the recovery strategy is updated pursuant to paragraph (7).

(3) A range of alternative interim and long-term conservation and management goals and activities. The department shall report why it prefers the activities it recommends.

(4) An estimate of the time and costs required to meet the interim recovery goals for the species, including available or anticipated funding sources, and an initial projection of the time and costs associated with meeting final recovery goals. These costs shall include direct and indirect costs and public and private costs.

(5) A description of actions and recommendations, including voluntary incentives and objective criteria for delisting and deregulation, if applicable, that will be needed to minimize the adverse social and economic impacts of implementation of the recovery strategy and a discussion of the range of recovery alternatives considered in the strategy.

(6) A description of the following elements necessary to achieve the goals of the recovery strategy:

(A) The availability and use of public lands for the conservation, protection, restoration, and enhancement of the species.

(B) Methods of private and public cooperation.

(C) Procedures and programs for notice, education, research, monitoring, and strategy modification.

(7) The expected time necessary to meet the interim recovery goals and provisions and triggers for review and amendment of the strategy. If final recovery goals are not specifically stated, the strategy shall contain a timetable for an update of the plan to clarify the long-term goals.

(8) Objective measurable criteria by which to determine whether the goals and objectives of the recovery strategy are being met and procedures for recognition of successful recovery and downlisting or delisting, if applicable.

(9) An implementation schedule.

SEC. 6. Section 2112 of the Fish and Game Code, as amended by Chapter 147 of the Statutes of 1997, is amended to read:

2112. If a recovery strategy for one of the species identified pursuant to Section 2105 or 2106 includes policies to guide the department's issuance of memoranda of understanding pursuant to Section 2081 and the department's consultation procedures pursuant to Section 2090, the department shall develop and adopt rules and guidelines to implement those policies. The rules and guidelines shall be based upon the best available scientific evidence and shall be consistent with the recovery strategy adopted. The rules and guidelines may clearly specify conditions and circumstances under which the taking of a species listed as a threatened species or endangered species would be prohibited by the department, or, conversely, when it would not require a memorandum of understanding pursuant to Section 2081.

SEC. 7. Section 2115 of the Fish and Game Code is amended to read:

2115. The two hundred thousand dollars ($200,000) appropriated in the Budget Act of 1997 for the purposes of this article shall be used for the Greater Sandhill crane. Any money that is not used to develop a recovery plan for that species may be used by the department to implement the recovery plan for that species. Section 2106 shall become operative only upon the appropriation of funds by the Legislature for its purposes. Section 2098 does not apply to any costs relating to this article.

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

In order to provide direction to the Department of Fish and Game as soon as possible for the expenditure of funds appropriated in the Budget Act of 1997 for the recovery strategy pilot program developed and implemented under the California Endangered Species Act, it is necessary for this act to take effect immediately.

CHAPTER 523

An act to amend, repeal, and add Section 12741 of the Insurance Code, relating to insurance.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. It is the intent of the Legislature that a repair or maintenance program for a home electrical system or a component of a wiring system given by a person or affiliate of a person regulated by the Public Utilities Commission not be subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code if a parent or affiliate company of the person offering the contract guarantees the obligations of the repair or maintenance program. The company offering the program shall designate the company that will act as the guarantor of the program.

SEC. 2. Section 12741 of the Insurance Code is amended to read:

12741. This part does not apply to:

(a) Performance guarantees or service contracts given by either the builder of a home or the manufacturer or seller of an appliance or other system or component, whether or not an identifiable charge is made for such guarantee or service contract.

(b) A service contract, guarantee, or warranty intending to guarantee or warrant the repairs or service of a home appliance, system or component, provided the service contract, guarantee or warranty is issued by a person who has sold, serviced, repaired or provided replacement of the appliance, system or component at the time of, or prior to issuance of the contract, guarantee or warranty; and, provided, further, that the person issuing the service contract, guarantee, or warranty, does not engage in the business of a home protection company.

(c) The provider of a pest control service agreement pursuant to Section 8516 of the Business and Professions Code.

(d) A repair or maintenance program for a home electrical system, or a component of such a wiring system where the program is offered by a person or affiliate of a person whose business is regulated by the Public Utilities Commission, provided that the repair or maintenance program is related to a service provided by the regulated person or affiliate of the regulated person, and that the regulated person, or affiliate of the regulated person, or parent company of the regulated person acts as the guarantor of any repair or maintenance program created under this subdivision regardless of whether the service is performed by the regulated person or an affiliate.

The company offering the program shall designate the company that will act as the guarantor of the program.

(e) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 3. Section 12741 is added to the Insurance Code, to read:

12741. This part shall not apply to:

(a) Performance guarantees or service contracts given by either the builder of a home or the manufacturer or seller of an appliance or other system or component, whether or not an identifiable charge is made for such guarantee or service contract.

(b) Any service contract, guarantee, or warranty intending to guarantee or warrant the repairs or service of a home appliance, system or component, provided such service contract, guarantee, or warranty is issued by a person who has sold, serviced, repaired or provided replacement of that appliance, system or component at the time of, or prior to issuance of the contract, guarantee, or warranty; and, provided, further, that the person issuing the service contract, guarantee, or warranty does not engage in the business of a home protection company.

(c) The provider of any pest control service agreement pursuant to Section 8516 of the Business and Professions Code.

(d) This section shall become operative January 1, 2004.

CHAPTER 524

An act to amend Section 115825 of, and to add Section 115841 to, the Health and Safety Code, relating to water.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 115825 of the Health and Safety Code is amended to read:

115825. (a) It is hereby declared to be the policy of this state that multiple use should be made of all public water within the state, to the extent that multiple use is consistent with public health and public safety.

(b) Except as provided in Sections 115840 and 115841, recreational uses shall not, with respect to a reservoir in which water is stored for domestic use, include recreation in which there is bodily contact with the water by any participant.

SEC. 2. Section 115841 is added to the Health and Safety Code, to read:

115841. Recreational activity in which there is bodily contact with the water by any participant shall continue to be allowed in Nacimiento Reservoir in accordance with all of the following requirements :

(a) Any agency that removes water from the reservoir for domestic use shall comply with any, or at a minimum, one of the following with regard to the water removed:

(1) The water subsequently receives complete water treatment in compliance with all applicable department regulations, including coagulation, flocculation, sedimentation, filtration, and disinfection, before being used for domestic purposes.

(2) The water is discharged in a manner that allows percolation into a subsurface groundwater basin for subsequent extraction from only those groundwater wells that have been determined by the department not to be under the influence of surface water pursuant to Chapter 17 (commencing with Section 64650) of Division 4 of Title 22 of the California Code of Regulations and subsequently receives disinfection and complies with all applicable department regulations before being used for domestic purposes.

(3) The water is discharged in a manner that allows percolation into a subsurface groundwater basin for subsequent extraction from groundwater wells under the influence of surface water that receives treatment pursuant to Chapter 17 (commencing with Section 64650) of Division 4 of Title 22 of the California Code of Regulations and complies with all applicable department regulations.

(b) The reservoir is operated in compliance with regulations of the department.

(c) The water stored for domestic purposes that may be excepted from the requirements of subdivision (b) of Section 115825 is removed from the reservoir by an agency for domestic purposes only in San Luis Obispo County and only in an amount for which that agency has a contractual right.

SEC. 3. The Legislature finds and declares that Section 2, which is applicable only to the Nacimiento Reservoir, is necessary because of the unique recreational needs in the County of San Luis Obispo. It is therefore, declared that a general law within the meaning of Section 16 of Article IV of the California Constitution cannot be made

applicable, and that the enactment of this special law is necessary for the use of water for the public good.

CHAPTER 525

An act to add Section 1018 to the Fish and Game Code, relating to water facilities.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1018 is added to the Fish and Game Code, to read:

1018. The director shall use the department's resources, to the fullest extent feasible, to coordinate with the federal government to promote the preservation of species, including species listed as endangered species or threatened species under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) and the California Endangered Species Act, Chapter 1.5 (commencing with Section 2050) of Division 3, and their habitats within the locale of Isabella Dam and Reservoir in Kern County in order to facilitate the continued operation of those facilities for flood control and water conservation storage as authorized by Congress and as provided in an agreement, dated October 23, 1964, among the United States and various local public agencies.

Nothing in this section is intended to amend, modify, or alter in any manner the intent of the California Endangered Species Act.

CHAPTER 526

An act to amend Section 1507 of the Health and Safety Code, and to amend Section 17732.1 of the Welfare and Institutions Code, relating to human services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1507 of the Health and Safety Code is amended to read:

1507. (a) Notwithstanding any other provision of law, incidental medical services may be provided in a community care facility. If the medical services constitute a substantial component of the services provided by the community care facility as defined by the director in regulations, the medical services component shall be approved as set forth in Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250).

(b) Notwithstanding any other provision of law, if the requirements of subdivision (c) are met, the department shall permit incidental medical services to be provided in community care facilities for adults by facility staff who are not licensed health care professionals but who are trained by a licensed health care professional and supervised according to the client's individualized health care plan prepared pursuant to subdivision (c). Incidental medical services provided by trained facility staff for the following conditions shall be limited as follows:

(1) Colostomy and ileostomy: changing bags and cleaning stoma.

(2) Urinary catheter: emptying bags in day care facilities; emptying and changing bags in residential facilities.

(3) Gastrostomy: feeding, hydration, cleaning stoma, and adding medication per physician's or nurse practitioner's orders for the routine medication of patients with chronic, stable conditions.

(c) Facility staff may provide incidental medical services if the following conditions have been met:

(1) For regional center clients the following shall apply:

(A) An individualized health care plan, which may be part of a client's individual program plan, shall be prepared for each client by a health care team that shall include the client or his or her designee if the client is not able to participate in planning his or her health care, the client's primary care physician or nurse practitioner or other health care professional designated by the physician or nurse practitioner, the licensee or licensee's designee, any involved social worker or regional center worker, and any health care professional designated to monitor the client's individualized health care plan.

(B) The client's individualized health care plan shall be reassessed at least every 12 months or more frequently as determined by the client's physician or nurse practitioner during the time the client receives incidental medical services in the facility.

(C) The client's regional center, primary care physician or nurse practitioner, or other health care professional designated by the physician or nurse practitioner shall identify the health care professional who shall be responsible for training facility staff in the provision of incidental medical services.

(D) Facility staff shall be trained by the identified health care professional practicing within his or her scope of practice who shall monitor, according to the individualized health care plan, the staff's ability to provide incidental medical services and who shall review,

correct, or update facility staff training as the health care professional deems necessary.

(E) The regional center or placing agency shall evaluate, monitor, and have responsibility for oversight of the incidental medical services provided in the facility by facility staff. However, nothing in this section shall preclude the department from taking an administrative action against a licensee or facility staff member for failure or refusal to carry out, or negligence in carrying out, his or her duties in providing these incidental medical services.

(2) For persons who are not regional center clients, the following shall apply:

(A) An individualized health care plan shall be prepared that includes the physician's or nurse practitioner's order for services to be provided during the time the client is in the day care facility. The plan shall be prepared by a team that includes the client or his or her designee if the client is not able to participate in planning his or her care, the client's social worker, conservator, or legal guardian, as appropriate, a licensed health care professional, and the licensee or the licensee's designee.

(B) The client's individualized health care plan shall be reassessed at least every 12 months or more frequently as determined by the client's physician or nurse practitioner during the time the client receives incidental medical services in the facility.

(C) A licensed health care professional practicing within his or her scope of practice shall train the staff of the facility on procedures for caring for clients who require incidental medical services and shall periodically review, correct, or update facility staff training as the health care professional deems necessary.

(d) Facilities providing incidental medical services shall remain in substantial compliance with all other applicable regulations of the department.

(e) The department shall adopt emergency regulations for community care facilities for adults by February 1, 1997, to do all of the following:

(1) Specify incidental medical services that may be provided. These incidental medical services shall include, but need not be limited to, any of the following: gastrostomy, colostomy, ileostomy, and urinary catheters.

(2) Specify the conditions under which incidental medical services may be provided.

(3) Specify the medical services that, due to the level of care required, are prohibited services.

(f) The department shall consult with the State Department of Developmental Services, the State Department of Mental Health, the Association of Regional Center Agencies, and provider associations in the development of the regulations required by subdivision (e).

SEC. 4. Section 17732.1 of the Welfare and Institutions Code is amended to read:

17732.1. (a) It is the intent of the Legislature that minor children who are residing in specialized foster care home placements on or after January 1, 1997, be allowed to remain in those homes upon reaching majority, through 22 years of age, in order to ensure continuity of care during completion of publicly funded education.

(b) A child with special health care needs may remain in a licensed foster family home or licensed small family home that is operating as a specialized foster care home pursuant to subdivision (i) of Section 17710 after the age of 18 years, if all of the following requirements are met:

(1) The child was a resident in the home prior to the age of 18.

(2) A determination regarding whether the child may remain as a resident after the age of 18 years is made through the agreement of all parties involved, including the resident, the foster parent, the social worker, the resident's regional center case manager, and the resident's parent, legal guardian, or conservator, as appropriate. This determination shall include a needs and service plan that contains an assessment of the child's needs and of continued compatibility with the other children in placement. The needs and service plan shall be completed within the six months prior to the child's 18th birthday and shall be updated with any significant change and whenever there is a change in household composition. The assessment shall be documented and maintained in the child's file, and shall be made available for inspection by the licensing staff.

(3) The regional center monitors and supervises its placements, as part of its regular and ongoing services to clients, to ensure the continued health and safety, appropriate placement, and compatibility of the developmentally disabled adult with special health care needs.

(4) The department notifies the foster care applicant, as part of its orientation process, that the state Foster Family Home and Small Family Home Insurance Fund does not expand existing coverage in Article 2.5 (commencing with Section 1527) of Chapter 3 of Division 2 of the Health and Safety Code for liability resulting from the provision of care to individuals over the age of 18 years.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that important statutory changes relating to community care facilities and children with special health care needs are implemented at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 527

An act to amend Section 10471 of the Business and Professions Code, to amend Section 86 of the Code of Civil Procedure, to add Section 3553 to the Labor Code, and to amend Section 1202.4 of the Penal Code, relating to restitution, and making an appropriation therefor.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 10471 of the Business and Professions Code is amended to read:

10471. (a) When an aggrieved person obtains (1) a final judgment in a court of competent jurisdiction, including, but not limited to, a criminal restitution order issued pursuant to subdivision (f) of Section 1202.4 of the Penal Code or Section 3663 of Title 18 of the United States Code, or (2) an arbitration award that includes findings of fact and conclusions of law rendered in accordance with the rules established by the American Arbitration Association or another recognized arbitration body, and in accordance with Sections 1281 to 1294.2, inclusive, of the Code of Civil Procedure where applicable, and where the arbitration award has been confirmed and reduced to judgment pursuant to Section 1287.4 of the Code of Civil Procedure, against a defendant based upon the defendant's fraud, misrepresentation, or deceit, made with intent to defraud, or conversion of trust funds arising directly out of any transaction not in violation of Section 10137 or 10138 in which the defendant, while licensed under this part, performed acts for which that license was required, the aggrieved person may, upon the judgment becoming final, file an application with the Department of Real Estate for payment from the Recovery Account, within the limitations specified in Section 10474, of the amount unpaid on the judgment that represents an actual and direct loss to the claimant in the transaction.

(b) The application shall be delivered in person or by certified mail to an office of the department not later than one year after the judgment has become final.

(c) The application shall be made on a form prescribed by the department, verified by the claimant, and shall include the following:

(1) The name and address of the claimant.

(2) If the claimant is represented by an attorney, the name, business address, and telephone number of the attorney.

(3) The identification of the judgment, the amount of the claim and an explanation of its computation.

(4) A detailed narrative statement of the facts in explanation of the allegations of the complaint upon which the underlying judgment is based.

(5) (A) Except as provided in subparagraph (B), a statement by the claimant, signed under penalty of perjury, that the complaint upon which the underlying judgment is based was prosecuted conscientiously and in good faith. As used in this section, "conscientiously and in good faith" means that no party potentially liable to the claimant in the underlying transaction was intentionally and without good cause omitted from the complaint, that no party named in the complaint who otherwise reasonably appeared capable of responding in damages was dismissed from the complaint intentionally and without good cause, and that the claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Recovery Account.

(B) For the purpose of an application based on a criminal restitution order, all of the following statements by the claimant:

(i) The claimant has not intentionally and without good cause failed to pursue any person potentially liable to the claimant in the underlying transaction other than a defendant who is the subject of a criminal restitution order.

(ii) The claimant has not intentionally and without good cause failed to pursue in a civil action for damages all persons potentially liable to the claimant in the underlying transaction who otherwise reasonably appeared capable of responding in damages other than a defendant who is the subject of a criminal restitution order.

(iii) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Recovery Account.

(6) The name and address of the judgment debtor or, if not known, the names and addresses of persons who may know the judgment debtor's present whereabouts.

(7) The following representations and information from the claimant:

(A) That he or she is not a spouse of the judgment debtor nor a personal representative of the spouse.

(B) That he or she has complied with all of the requirements of this chapter.

(C) That the judgment underlying the claim meets the requirements of subdivision (a).

(D) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets liable to be sold or applied to satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to satisfaction of the judgment.

(E) That he or she has diligently pursued collection efforts against other judgment debtors and all other persons liable to the claimant in the transaction that is the basis for the underlying judgment.

(F) That the underlying judgment and debt have not been discharged in bankruptcy, or, in the case of a bankruptcy proceeding that is open at the time of the filing of the application, that the judgment and debt have been declared to be nondischargeable.

(G) That the application was mailed or delivered to the department no later than one year after the underlying judgment became final.

(d) The application form shall include detailed instructions with respect to documentary evidence, pleadings, court rulings, the products of discovery in the underlying litigation, and a notice to the applicant of his or her obligation to protect the underlying judgment from discharge in bankruptcy, to be appended to the application.

(e) An application for payment from the Recovery Account that is based on a criminal restitution order shall comply with all of the requirements of this chapter. For the purpose of an application based on a criminal restitution order, the following terms have the following meanings:

(1) "Judgment" means the criminal restitution order.

(2) "Complaint" means the facts of the underlying transaction upon which the criminal restitution order is based.

(3) "Judgment debtor" means any defendant who is the subject of the criminal restitution order.

SEC. 2. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) Each municipal court has original jurisdiction of civil cases and proceedings as follows:

(1) In all cases at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars ($25,000) or less, except cases that involve the legality of any tax, impost, assessment, toll, or municipal fine, except the courts have jurisdiction in actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) In actions for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars ($25,000); in actions of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars ($25,000).

(3) In actions to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars ($25,000) or property of a value not exceeding twenty-five thousand dollars ($25,000), paid or delivered under, or in consideration of, the contract; in actions to revise a contract where the relief is sought in an action upon the contract if the court otherwise has jurisdiction of the action.

(4) In all proceedings in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars ($25,000) or less.

(5) In all actions to enforce and foreclose liens on personal property where the amount of the liens is twenty-five thousand dollars ($25,000) or less.

(6) In all actions to enforce and foreclose liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens is twenty-five thousand dollars ($25,000) or less. However, where an action to enforce the lien is pending in a municipal court, and affects property that is also affected by a similar action pending in a superior court, or where the total amount of the liens sought to be foreclosed against the same property by action or actions in a municipal court aggregates an amount in excess of twenty-five thousand dollars ($25,000), the municipal court in which the action or actions are pending, upon motion of any interested party, shall order the action or actions pending therein transferred to the proper superior court. Upon making the order, the same proceedings shall be taken as are provided by Section 399 with respect to the change of place of trial.

(7) In actions for declaratory relief when brought pursuant to either of the following:

(A) By way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding otherwise within the jurisdiction of the municipal court.

(B) To conduct a trial after a nonbinding fee arbitration between an attorney and client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the amount in controversy is twenty-five thousand dollars ($25,000) or less.

(8) To issue temporary restraining orders and preliminary injunctions, to take accounts, and to appoint receivers where necessary to preserve the property or rights of any party to an action of which the court has jurisdiction; to appoint a receiver and to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments); to determine title to personal property seized in an action pending in the court.

(9) In all actions under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding twenty-five thousand dollars ($25,000) or the debt denied does not exceed twenty-five thousand dollars ($25,000).

(10) In all arbitration-related petitions filed pursuant to either of the following:

(A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the Insurance Code, if the petition is filed before the arbitration award becomes final and the matter to be resolved by arbitration is within the jurisdiction of the municipal court under paragraphs (1) to (9), inclusive, or the petition if filed after the arbitration award becomes final and the amount of the award and all other rulings, pronouncements, and decisions made in the award are within the jurisdiction of the municipal court under paragraphs (1) to (9), inclusive.

(B) To confirm, correct, or vacate a fee arbitration award between an attorney and client that is binding or has become binding, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the arbitration award is twenty-five thousand dollars ($25,000) or less.

(11) In all actions to enforce restitution orders or restitution fines that were imposed by the municipal court.

(b) Each municipal court has jurisdiction of cases in equity as follows:

(1) In all cases to try title to personal property when the amount involved is not more than twenty-five thousand dollars ($25,000).

(2) In all cases when equity is pleaded as a defensive matter in any case otherwise properly pending in a municipal court.

(3) To vacate a judgment or order of the municipal court obtained through extrinsic fraud, mistake, inadvertence, or excusable neglect.

(c) In any action that is otherwise within its jurisdiction, the court may impose liability whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

(d) Changes in the jurisdictional ceilings made by amendments to this section at the 1977–78 Regular Session or the 1985–86 Regular Session of the Legislature shall not constitute a basis for the transfer to another court of any case pending at the time these changes become operative.

SEC. 3. Section 3553 is added to the Labor Code, to read:

3553. Every employer subject to the compensation provisions of this code shall give any employee who is a victim of a crime that occurred at the employee's place of employment written notice that the employee is eligible for workers' compensation for injuries, including psychiatric injuries, that may have resulted from the place of employment crime. The employer shall provide this notice, either personally or by first-class mail, within one working day of the place of employment crime, or within one working day of the date the employer reasonably should have known of the crime.

SEC. 4. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment pursuant to Section 1214.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability

to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution payments made pursuant to this subdivision shall be made to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(D) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or

guardians, due to time spent as a witness or in assisting the police or prosecution.

(E) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(F) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(G) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment, pursuant to Section 1214.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include the immediate surviving family of the actual victim. "Victim" shall also include any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13966.01 of the Government Code shall apply to restitution imposed pursuant to this section.

CHAPTER 528

An act to add Article 3.5 (commencing with Section 2086) to Chapter 1.5 of Division 3 of the Fish and Game Code, relating to endangered species.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Article 3.5 (commencing with Section 2086) is added to Chapter 1.5 of Division 3 of the Fish and Game Code, to read:

Article 3.5. Incidental Take Associated with Routine and Ongoing Activities

2086. (a) The department, in cooperation with the Department of Food and Agriculture, agricultural commissioners, extension agents, farmers, ranchers, and other agricultural experts, shall adopt regulations that authorize locally designed voluntary programs for routine and ongoing agricultural activities on farms or ranches which encourage habitat for candidate, threatened, and endangered species, and wildlife generally. Agricultural commissioners, extension agents, farmers, ranchers, or other agricultural experts, in cooperation with conservation groups, may propose such programs to the department. The department shall propose regulations for those programs not later than July 1, 1998.

(b) Programs authorized under subdivision (a) shall do all of the following:

(1) Include management practices that will, to the maximum extent practicable, avoid and minimize take of candidate, endangered, and threatened species, while encouraging the enhancement of habitat.

(2) Be supported by the best available scientific information for both agricultural and conservation practices.

(3) Be consistent with the policies and goals of this chapter.

(4) Be designed to provide sufficient flexibility to maximize participation and to gain the maximum wildlife benefits without compromising the economics of agricultural operations.

(5) Include terms and conditions to allow farmers or ranchers to cease participation in a program without penalty. The terms and conditions shall include reasonable measures to minimize take during withdrawal from the program.

(c) Any taking of candidate, threatened, or endangered species incidental to routine and ongoing agricultural activities that occurs while the management practices specified by paragraph (1) of subdivision (b) are followed, is not prohibited by this chapter.

(d) (1) The department shall automatically renew the authorization for these voluntary programs every five years, unless the Legislature amends or repeals this section in which case the program shall be revised to conform to this section.

(2) Notwithstanding Section 7550.5 of the Government Code, beginning in 2000, and every five years thereafter, the department shall report to the appropriate policy committees of the Legislature regarding the effect of the programs. The department shall consult with the Department of Food and Agriculture in evaluating the programs and preparing the report. The report shall address factors such as the temporary and permanent acreage benefiting from the programs, include an estimate of the amount of land upon which routine and ongoing agricultural activities are conducted, provide examples of farmer and rancher cooperation, and include recommendations to improve the voluntary participation by farmers and ranchers.

(e) If the authorization for these programs is not renewed or is modified under subdivision (d), persons participating in the program shall be allowed to cease participating in the program in accordance with the terms and conditions specified in paragraph (6) of subdivision (b), without penalty.

2087. (a) Accidental take of candidate, threatened, or endangered species resulting from inadvertent or ordinary negligent acts that occur on a farm or a ranch in the course of otherwise lawful routine and ongoing agricultural activities is not prohibited by this chapter.

(b) This section shall remain in effect only until December 31, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2002, deletes or extends that date.

2088. This article does not authorize the take of fish species and does not apply to timber harvesting governed by the State Board of Forestry. "Fish species" as used in this section means a member of the class Osteichthyes.

2089. Routine and ongoing agricultural activities shall be defined by the department by regulation and shall not include the conversion of agricultural land to a nonagricultural use.

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 529

An act to amend Section 25503.15 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 25503.15 of the Business and Professions Code is amended to read:

25503.15. (a) Notwithstanding any other provision of this division, a winegrower who manufactures, produces, bottles, processes, imports, or sells wine only, or any officer, director, or agent of that person, may hold the ownership of any interest in any on-sale license, or the business conducted under that license, provided that the person or the officer, director, or agent of that person, shall have entered into an undertaking approved by the department stating both of the following:

(1) That neither that person nor any officer, director, or agent of that person shall sell or furnish to the holder of the license any wine, or permit the sale pursuant to that license of any wine, manufactured, produced, wholesaled, bottled, processed, imported, or sold by that person or that person's principal for as long as that ownership continues.

(2) That neither that person nor any officer, director, or agent of that person shall enter into any collusive scheme whereby he or she unfairly sells or promotes, in his or her on-sale businesses, the wine of another winegrower who manufactures, produces, bottles, processes, imports, or sells wine only, in return for his or her wine

being unfairly sold or promoted in the on-sale businesses of that winegrower.

(b) Notwithstanding any other provision of this division, any licensed winegrower or any winegrower who has a wholesale license, or any officer, director, or agent of that person, may hold, directly or indirectly, the ownership of any interest in an on-sale license, provided that each of the following conditions is met:

(1) The on-sale licensed premises are licensed as a bona fide public eating place as defined in Section 23038, or as a bona fide bed and breakfast inn as defined in Section 24045.11.

(2) The on-sale licensed premises purchases all alcoholic beverages sold and served at the on-sale licensed premises only from California wholesale licensees, other than the licensed winegrower who has a wholesale license and an interest in an on-sale license, unless one of the following conditions is met:

(A) The wine purchased is produced or bottled by, or produced and packaged for, the same licensed winegrower that holds an interest in the on-sale license.

(B) The wine is produced or bottled by, and is purchased from, a licensed winegrower who sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.

(C) The wine is purchased by an on-sale licensee in whose on-sale license a licensed winegrower holds an interest, provided that the winegrower sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.

(3) The licensed winegrower and any officer, director, or agent of that person, whether individually or in the aggregate, do not sell and serve the wine products produced or bottled under any brand or trade name owned by that winegrower through more than two on-sale licensed premises in which any of them holds an ownership interest.

(4) The number of wine items by brand offered for sale by the on-sale licensed premises that are produced, bottled, processed, imported, or sold by the licensed winegrower or by any person holding any interest in the winegrower does not exceed 15 percent of the total wine items by brand listed and offered for sale in the licensed bona fide public eating place selling and serving that wine. This paragraph does not apply to a bona fide bed and breakfast inn.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this section to the general prohibition against tied

interests must be limited to their express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

CHAPTER 530

An act to add Section 12804 to the Food and Agricultural Code, relating to pesticides.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 12804 is added to the Food and Agricultural Code, to read:

12804. (a) The director, by regulation, may exempt from all or part of the requirements of this division a liquid chemical sterilant product for use on a critical or semi-critical medical device that is exempt from the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.) pursuant to subdivision (u) of Section 2 of that act (7 U.S.C. Sec. 136 (u)), and that has obtained clearance from the federal Food and Drug Administration under subdivision (k) of Section 510 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 306 (k)) if both of the following apply:

(1) The product does not include ethylene oxide as an active ingredient.

(2) The director excludes from the exempting regulation requirements to report pesticide-related illnesses, to collect information and data concerning pesticide-related illnesses, and to transmit that information and data to the appropriate agency or entity for inspection or followup, and other specific requirements of this division that may otherwise be applicable and that are necessary to protect the public health or the environment. Notwithstanding any other provision of law, the director shall retain the authority to regulate any substance exempted pursuant to this section whether registered or not.

(b) On or before July 1, 1998, the director may adopt the regulations authorized under subdivision (a) as emergency regulations. In adopting those regulations as emergency regulations, the director is not required to make the finding required by subdivision (b) of Section 11346.1 of the Government Code.

CHAPTER 531

An act to amend Sections 77411, 77416, 77421, 77425, 77430, 77434, 77442, 77481, 77483, and 77485 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 77411 of the Food and Agricultural Code is amended to read:

77411. "Strawberries" mean all strawberries produced in California for commercial purposes.

SEC. 2. Section 77416 of the Food and Agricultural Code is amended to read:

77416. "Districts" consist of the following:

(a) District 1 consists of San Diego, Imperial, and Riverside Counties.

(b) District 2 consists of Los Angeles, Orange, and San Bernardino Counties.

(c) District 3 consists of Santa Barbara and San Luis Obispo Counties.

(d) District 4 consists of Ventura County.

(e) District 5 consists of Madera, Fresno, Kings, Tulare, Kern, Inyo, Merced, Stanislaus, San Joaquin, and Sacramento Counties and all other counties within the State of California not included in Districts 1 to 4, inclusive, and District 6.

(f) District 6 consists of Alameda, Monterey, San Benito, San Mateo, Santa Clara, and Santa Cruz Counties, and the City and County of San Francisco.

The boundaries of any district may be changed by a two-thirds vote of the commission, which is concurred in by the secretary, to ensure proper representation. The boundaries need not coincide with county lines.

SEC. 3. Section 77421 of the Food and Agricultural Code is amended to read:

77421. "Processor" means any person who performs any of the functions of processing strawberries within California. When a processor is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments for which a corporate processor may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation. It does not, however, include a retailer, except a retailer who purchases or acquires from, or processes on

behalf of, any producer, strawberries that were not previously subject to assessment by the commission.

SEC. 4. Section 77425 of the Food and Agricultural Code is amended to read:

77425. "Shipper" means any person who performs any of the functions of shipping strawberries within California. When the shipper is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments for which a corporate shipper may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation. It does not, however, include a retailer, except a retailer who purchases or acquires from, or ships on behalf of, any producer, strawberries that were not previously subject to assessment by the commission.

SEC. 5. Section 77430 of the Food and Agricultural Code is amended to read:

77430. (a) There is in the state government the California Strawberry Commission. Except as provided in subdivision (d), the commission shall be composed of 13 producers, five shippers, five processors, and one public member.

(b) Except as provided in subdivision (d), producers within the respective districts shall elect one member from District 1, two members from District 2, two members from District 3, two members from District 4, one member from District 5, and five members from District 6. Shippers and processors shall be elected by and from shippers and processors, respectively, on a statewide basis without reference to districts. The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

(c) The secretary and other appropriate persons as determined by the commission shall be ex officio members of the commission.

(d) The commission may modify the number of producers in each district, and shippers and processors who serve on the commission, and may elect producers, shippers, and processors to serve as members at large of the commission. The total number of producer, shipper, and processor members shall not exceed 32.

SEC. 6. Section 77434 of the Food and Agricultural Code is amended to read:

77434. Except for the ex officio members of the commission, an alternate member for each member shall be elected in the same manner as the member. An alternate member, in the absence of the member for whom he or she is an alternate, shall serve in place of the member on the commission. An alternate member may also serve in place of any other absent member of the same classification (producer, shipper, or processor) from the same district if that member's alternate is also absent. However, an alternate may not serve in place of more than one absent member at a meeting. An

alternate member serving in place of a member shall have and be able to exercise all rights, privileges, and powers of the member when serving on the commission. In the event of death, removal, resignation, or the disqualification of a member, the alternate for that member, or another alternate of the same classification from the same district if the alternate for that member is absent, shall act as a member on the commission until a qualified successor is elected.

SEC. 7. Section 77442 of the Food and Agricultural Code is amended to read:

77442. A quorum of the commission is a majority of the voting producer members, a majority of the voting shipper members, and a majority of the voting processor members on the commission. Except as provided in Sections 77481.5 and 77499, the vote of a majority of members present at a meeting at which there is a quorum shall constitute an act of the commission.

SEC. 8. Section 77481 of the Food and Agricultural Code is amended to read:

77481. The commission shall, not later than February 1 of each year, establish the assessment for the marketing season that begins February 1 and continues through January 31 of the following year. The assessment shall not exceed the following amounts:

(a) Two and one-half cents ($0.025) per crate, or the equivalent, for strawberries delivered for shipping by producers.

(b) Two and one-half cents ($0.025) per crate, or the equivalent, for strawberries received by shippers from producers.

(c) Two and one-half cents ($0.025) per 14 pounds for strawberries delivered for processing by producers.

(d) Two and one-half cents ($0.025) per 14 pounds for strawberries received by processors for processing from producers.

An assessment greater than the amounts in this section may not be charged unless it is approved in accordance with the voting requirements of Section 77462.

SEC. 9. Section 77483 of the Food and Agricultural Code is amended to read:

77483. Every shipper and processor shall keep a complete and accurate record of all strawberries shipped or processed by him or her with the name of the producer whose strawberries were shipped or processed. A producer who delivers or markets strawberries to persons other than to a shipper or processor shall keep a complete and accurate record of all those strawberries. The records shall contain information required by the commission. The records shall be preserved by the producer, shipper, or processor for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

SEC. 10. Section 77485 of the Food and Agricultural Code is amended to read:

77485. Producer assessments shall be upon the producer. The first shipper or processor of strawberries being assessed shall deduct the assessment from amounts paid by him or her to the producer, and shall be a trustee of the funds until they are paid to the commission at the time and in the manner prescribed by the commission. A producer who delivers or markets strawberries to persons other than to a shipper or processor shall pay an assessment directly to the commission at the time and in the manner prescribed by the commission.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 532

An act to amend Section 30546 of the Water Code, relating to water.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 30546 of the Water Code is amended to read:

30546. Any regular employee of a district who is a deputy sheriff, or who has successfully completed the peace officer training course described in subdivision (a) of Section 832 of the Penal Code, and is designated by appropriate resolution of the board, has the authority to issue citations in accordance with the provisions of Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code for violations of laws of the state and ordinances of a city, a county, or the district, respecting trespass upon, damage to, interference with, or contamination of, any water, watercourse, land, structure, or facility owned, used, or controlled by the district for any purpose.

CHAPTER 533

An act to amend Sections 6450, 6453, and 6455 of, to add Sections 6440, 6459, and 6460 to, and to repeal Section 6458 of, the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 6440 is added to the Fish and Game Code, to read:

6440. The Legislature finds and declares that triploid grass carp have the potential to control aquatic nuisance plants in non-public waters allowing for reduced chemical control but that the threat that grass carp pose to aquatic habitat may outweigh its benefits. It is the intent of this section to allow the Department of Fish and Game to use its management authority to provide for the long-term health of the ecosystem in the state including the aquatic ecosystem, and in that context, manage grass carp either through control of movement, eradication of populations, acquisition of habitat and any other action that the department finds will maintain the biological diversity and the long term, overall health of the state's environment. The department shall undertake the management of grass carp in a manner that is consistent with provisions of this code and for the purposes of this section the department shall define management as handling, controlling, destroying, or moving species. The Legislature does not intend for this section to provide a right for the use of triploid grass carp if the department finds that use of the species poses an unacceptable risk to the state's existing ecosystem.

SEC. 2. Section 6450 of the Fish and Game Code is amended to read:

6450. The department shall adopt regulations that provide for the control of aquatic plant pests using artificially introduced triploid grass carp under a permit issued by the department. The regulations shall do all of the following:

(a) Restrict triploid grass carp introductions to those triploid grass carp that have been rendered sterile immediately after the eggs have been fertilized.

(b) Require individual fish to be checked to ensure that a third, triploid, set of chromosomes has been retained, preventing further reproduction by that individual fish.

(c) Limit aquatic plant pest control programs using triploid grass carp to the use of sterile triploid grass carp with documented certification of triploidy to ensure sterility.

(d) Require the identification by tagging of individual fish as the property of each owner.

(e) Require the posting of notices at stocked bodies of water declaring the penalties for removing triploid grass carp.

(f) Limit the permits for the use of triploid grass carp in waters on golf courses located in residential areas to those waters that are determined by the department to be secure from the removal of triploid grass carp to unauthorized waters.

(g) Provide for management of the triploid grass carp populations in a manner consistent with the provisions of this code where the department finds that such actions will benefit the long-term health of the state's biodiversity as a whole.

(h) Until January 1, 1999, the regulations shall not authorize the issuance of permits for the use of triploid grass carp in waters located within condominium areas of any residential area for which a permit may not be issued pursuant to subdivision (f) except at three locations within the area authorized pursuant to this subdivision. The three locations shall be selected by the department in consultation with the Imperial Irrigation District. The limitation to three locations is necessary to enable monitoring of human-induced movement of triploid grass carp to unauthorized waters and to permit the evaluation of the impact of the experiment. The results of the evaluation shall be reported to the Legislature before the use of triploid grass carp is authorized in other similar waters.

SEC. 3. Section 6453 of the Fish and Game Code is amended to read:

6453. (a) On or before March 1 of each year following the first year after triploid grass carp introduction, the permittee shall provide to the department all of the information required by the department, including, but not limited to, the following:

(1) The number and size of triploid grass carp recommended for the waterway stocked.

(2) The number and size of triploid grass carp stocked in the waterway.

(3) The acres of aquatic plants, by species, at the peak of the growing season in the year prior to introduction of triploid grass carp in the waterway stocked.

(4) The acres of aquatic plants, by species, at the peak of the current year growing season.

(b) The annual report shall be submitted until five years after the use of triploid grass carp to control aquatic plant pests is terminated, unless evidence acceptable to the department is provided that all triploid grass carp have been removed from the waterway.

(c) On or before June 1 of each year, the department shall report to the appropriate policy and fiscal committees of the Legislature a summary of the use of triploid grass carp use for aquatic plant pest control compiled from information from permittees annual reports received pursuant to subdivision (a).

SEC. 4. Section 6455 of the Fish and Game Code is amended to read:

6455. The department shall impose conditions in the permit to use triploid grass carp under this article that it finds necessary to prevent escape of the triploid grass carp from the targeted area. The conditions shall include, but are not limited to, the following:

(a) No permit shall be issued for the use of triploid grass carp in waters with an open fresh water connection to other waters of the state.

(b) Any waters in which triploid grass carp are used under this article shall be under the control of the permittee. In addition, barriers to fish movement acceptable to the department shall be in place before introduction of triploid grass carp under this article. Movement of triploid grass carp to areas outside the control of the permittee is prohibited.

(c) Any waters in which triploid grass carp are used under this article shall have sufficient dissolved oxygen and suitable vegetation for consumption to sustain the introduced triploid grass carp, as determined by the department.

(d) Except within closed basins, including the Salton Sea, no permit shall be issued for the use of triploid grass carp within the 100-year flood plain.

(e) Except as provided in Section 6459, permits may be issued pursuant to this article only for the counties of Imperial, Riverside, and San Bernardino.

(f) Any person or persons engaging in the introduction of triploid grass carp into any area, or in the transfer of triploid grass carp from one site to another, without a permit from the department shall be punished by a fine of not more than five thousand dollars ($5,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

SEC. 5. Section 6458 of the Fish and Game Code is repealed.

SEC. 6. Section 6459 is added to the Fish and Game Code, to read:

6459. (a) In the report required by subdivision (c) of Section 6453, beginning in 1998, the department shall report to the appropriate policy and fiscal committees of the Legislature its findings with respect to whether the use of triploid grass carp for aquatic pest plant control may be expanded in six more southern California counties or statewide. The finding shall be based on documented and verifiable evidence.

(b) If the department finds in the report required by subdivision (c) of Section 6453 that the use of triploid grass carp may be expanded to six more counties, beginning January 1 of the following year, the department shall authorize the use of triploid grass carp for aquatic pest plant control in the counties of San Diego, Orange, Los Angeles, Kern, Ventura, and Santa Barbara.

(c) If the department finds in the report required by subdivision (c) of Section 6453 that the use of triploid grass carp may be expanded to statewide, beginning January 1 of the following year, the

department shall authorize the use of triploid grass carp for aquatic pest plant control statewide.

(d) If the department finds in the report required by subdivision (c) of Section 6453 that the use of triploid grass carp should not be expanded to six more counties or statewide, the department shall reconsider that finding in the next year's report.

(e) If the department's annual report is, for any reason, not submitted on or before June 1 of the year due, it shall be conclusively deemed to be the finding of the department that effective June 1 of that year, the use of triploid grass carp to control aquatic plant pests should be expanded statewide.

(f) Notwithstanding subdivisions (b) and (c), the department may limit permit applications to no more than 150 per fiscal year, and may prioritize the processing of permit applications for purposes of administrative and cost efficiencies.

SEC. 7. Section 6460 is added to the Fish and Game Code, to read:

6460. If the department obtains documented and verifiable evidence of escapements of triploid grass carp permitted under this article into unauthorized waters, the unauthorized use of grass carp, or threats to fish and wildlife and their habitats as the result of this program, it may, upon a written finding by the director to that effect, suspend the permit issuance process authorized by this article. If the situation is local, the suspension may be limited to that area whose waters, habitat, and fish and wildlife resources are threatened. The suspension shall last until the director makes a written finding that the threat has been abated.

CHAPTER 534

An act to amend Sections 19621.1, 19622.1, 19622.3, and 19622.4 of, and to repeal Section 19622.5 of, the Business and Professions Code, relating to district agricultural associations.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 19621.1 of the Business and Professions Code is amended to read:

19621.1. Notwithstanding any other provision of law, neither the state nor the Department of Food and Agriculture is liable for any contract or tort of, or any action taken or any failure to act by, any fair in the network of California fairs that does 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. 2. Section 19622.1 of the Business and Professions Code is amended to read:

19622.1. (a) In order to maintain their eligibility to receive funds or to utilize state assets, the fairs specified in Section 19418 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 agriculture and other community-relevant exhibits and competitions.

(b) The Department of Food and Agriculture may withhold or restrict allocations to fairs that do not comply with this section or the fiscal standards or administrative standards established by the department. The department shall establish an appeal process for fairs regarding funds that are withheld or restricted.

SEC. 3. Section 19622.3 of the Business and Professions Code is amended to read:

19622.3. (a) The authority of the Department of Food and Agriculture shall include, but is not limited to, requiring district agricultural associations to meet all applicable standards prescribed by the Department of Food and Agriculture.

(b) The department may delegate approval authority for such matters as the department may determine to the board of directors if the board complies with this section. The department shall report annually to the Joint Fairs Committee the names of fairs that are delegated that authority.

(c) Notwithstanding any other provision of law, and in order to protect the integrity of the Fair and Exposition Fund, the department may assume all rights, duties, and powers of the board of directors of a district agricultural association if the department reasonably determines that there is insufficient fiscal or administrative control. The board of directors shall again exercise these rights, duties, and powers when the department determines that the fair is in compliance with this section. The department shall report annually to the Joint Fairs Committee the names of fairs with respect to which the department has taken the action prescribed in this subdivision and subdivision (d).

(d) The department may petition a court of competent jurisdiction for an order appointing the department, or a person designated by the department, as a receiver if it determines that the

fair is insolvent, or is in imminent danger of insolvency. The court shall appoint a receiver upon a showing that the fair is insolvent, or is in imminent danger of insolvency.

(e) For the purposes of this section, "insolvency" means that the district agricultural association is unable to discharge its debts as they become due in the usual course of business.

SEC. 4. Section 19622.4 of the Business and Professions Code is amended to read:

19622.4. The authority of the Department of Food and Agriculture shall include, but is not limited to, requiring county fairs and citrus fruit fairs to do all of the following:

(a) Meet all applicable standards prescribed by the Department of Food and Agriculture.

(b) Submit to the department for review and approval every five years a written agreement specifying the operational, financial, and administrative responsibilities between the entity producing the fair and the host county, or the host agency.

SEC. 5. Section 19622.5 of the Business and Professions Code is repealed.

CHAPTER 535

An act to amend Section 25503.30 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 25503.30 of the Business and Professions Code is amended to read:

25503.30. Notwithstanding any other provision of this division, a winegrower or one or more of its direct or indirect subsidiaries of which the winegrower owns not less than a 51 percent interest, who manufactures, produces, bottles, processes, imports, or sells wine and distilled spirits made from grape wine or other grape products only, under a winegrower's license or any other license issued pursuant to this division, or any officer or director of, or any person holding any interest in, those persons may serve as an officer or director of, and may hold the ownership of any interest or any financial or representative relationship in, any on-sale license, or the business conducted under that license, provided that, except in the case of a holder of on-sale general licenses for airplanes and duplicate on-sale general licenses for air common carriers, all of the following conditions are met:

(a) The on-sale licensee purchases all alcoholic beverages sold and served only from California wholesale licensees.

(b) The number of wine items by brand offered for sale by the on-sale licensee that are produced, bottled, processed, imported, or sold by the licensed winegrower or by the subsidiary of which the winegrower owns not less than 51 percent, or by any officer or director of, or by any person holding any interest in, those persons does not exceed 15 percent of the total wine items by brand listed and offered for sale by the on-sale licensee selling and serving that wine.

(c) None of the persons specified in this section may have any of the interests specified in this section in more than two on-sale licenses.

(d) The Legislature finds that while this section provides a limited exception for licensed winegrowers, that limited exception is granted for specific purposes, and that it is also necessary and proper that licensed winegrowers maintain the authority granted under this division to sell wine and brandy to any individual consumer or any person holding a license authorizing the sale of wine or brandy.

(e) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this section to the general prohibition against tied interests must be limited to their express terms so as not to undermine the general prohibition, and the Legislature intends that this section be construed accordingly.

CHAPTER 536

An act to amend Sections 1957, 1961, and 1967 of the Streets and Highways Code, and to amend Section 21716 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1957 of the Streets and Highways Code is amended to read:

1957. (a) If a city or county adopts a golf cart transportation plan, it shall do both of the following:

(1) Establish minimum general design criteria for the development, planning, and construction of separated golf cart lanes,

including, but not limited to, the design speed of the facility, the space requirements of the golf cart, and roadway design criteria.

(2) In cooperation with the department, establish uniform specifications and symbols for signs, markers, and traffic control devices to control golf cart traffic; to warn of dangerous conditions, obstacles, or hazards; to designate the right-of-way as between golf carts, other vehicles, and bicycles; to state the nature and destination of the golf cart lane; and to warn pedestrians, bicyclists, and motorists of the presence of golf cart traffic.

(b) The construction of separated golf cart lanes, as required under paragraph (1) of subdivision (a), does not apply in a residence district, as defined in Section 515 of the Vehicle Code, located within any city containing a population of less than 50,000 residents with a geographical area of more than 20 square miles in which city there are at least 20 golf courses, if the speed limit in that district is 25 miles per hour or less.

SEC. 1.5. Section 1961 of the Streets and Highways Code is amended to read:

1961. A city or county that adopts a golf cart transportation plan shall adopt all of the following as part of the plan:

(a) Minimum design criteria for golf carts, that may include, but not be limited to, headlights, turn signals, safety devices, mirrors, brake lights, windshields, and other devices. The criteria may include requirements for seatbelts and a covered passenger compartment.

(b) A permit process for golf carts that requires permitted golf carts to meet minimum design criteria adopted pursuant to subdivision (a). The permit process may include, but not be limited to, permit posting, permit renewal, operator education, and other related matters.

(c) Minimum safety criteria for golf cart operators, including, but not limited to, requirements relating to golf cart maintenance and golf cart safety. Operators shall be required to possess a valid California driver's license and to comply with the financial responsibility requirements established pursuant to Chapter 1 (commencing with Section 16000) of Division 7.

(d) (1) Restrictions limiting the operation of golf carts to separated golf cart lanes on those roadways identified in the transportation plan, and allowing only those golf carts that have been retrofitted with the safety equipment specified in the plan to be operated on separated golf cart lanes of approved roadways in the plan area.

(2) Any person operating a golf cart in the plan area in violation of this subdivision is guilty of an infraction punishable by a fine not exceeding one hundred dollars ($100).

SEC. 2. Section 1967 of the Streets and Highways Code is amended to read:

1967. This chapter shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2001, deletes or extends that date.

SEC. 3. Section 21716 of the Vehicle Code, as amended by Section 12 of Chapter 334 of the Statutes of 1995, is amended to read:

21716. (a) Except as provided in Section 21115.1 and Chapter 6 (commencing with Section 1950) of Division 2.5 of the Streets and Highways Code, no person shall operate a golf cart on any highway except in a speed zone of 25 miles per hour or less.

(b) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2001, deletes or extends that date.

SEC. 4. Section 21716 of the Vehicle Code, as amended by Section 13 of Chapter 334 of the Statutes of 1995, is amended to read:

21716. (a) Except as provided in Section 21115.1, no person shall operate a golf cart on any highway except in a speed zone of 25 miles per hour or less.

(b) This section shall become operative on January 1, 2001.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 537

An act to add Section 1941.3 to the Civil Code, relating to civil law.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1941.3 is added to the Civil Code, to read:

1941.3. (a) On and after July 1, 1998, the landlord, or his or her agent, of a building intended for human habitation shall do all of the following:

(1) Install and maintain an operable dead bolt lock on each main swinging entry door of a dwelling unit. The dead bolt lock shall be installed in conformance with the manufacturer's specifications and

shall comply with applicable state and local codes including, but not limited to, those provisions relating to fire and life safety and accessibility for the disabled. When in the locked position, the bolt shall extend a minimum of $^{13}/_{16}$ of an inch in length beyond the strike edge of the door and protrude into the doorjamb.

This section shall not apply to horizontal sliding doors. Existing dead bolts of at least one-half inch in length shall satisfy the requirements of this section. Existing locks with a thumb-turn deadlock that have a strike plate attached to the doorjamb and a latch bolt that is held in a vertical position by a guard bolt, a plunger, or an auxiliary mechanism shall also satisfy the requirements of this section. These locks, however, shall be replaced with a dead bolt at least $^{13}/_{16}$ of an inch in length the first time after July 1, 1998, that the lock requires repair or replacement.

Existing doors which cannot be equipped with dead bolt locks shall satisfy the requirements of this section if the door is equipped with a metal strap affixed horizontally across the midsection of the door with a dead bolt which extends $^{13}/_{16}$ of an inch in length beyond the strike edge of the door and protrudes into the doorjamb. Locks and security devices other than those described herein which are inspected and approved by an appropriate state or local government agency as providing adequate security shall satisfy the requirements of this section.

(2) Install and maintain operable window security or locking devices for windows that are designed to be opened. Louvered windows, casement windows, and all windows more than 12 feet vertically or six feet horizontally from the ground, a roof, or any other platform are excluded from this subdivision.

(3) Install locking mechanisms that comply with applicable fire and safety codes on the exterior doors that provide ingress or egress to common areas with access to dwelling units in multifamily developments. This paragraph does not require the installation of a door or gate where none exists on January 1, 1998.

(b) The tenant shall be responsible for notifying the owner or his or her authorized agent when the tenant becomes aware of an inoperable dead bolt lock or window security or locking device in the dwelling unit. The landlord, or his or her authorized agent, shall not be liable for a violation of subdivision (a) unless he or she fails to correct the violation within a reasonable time after he or she either has actual notice of a deficiency or receives notice of a deficiency.

(c) On and after July 1, 1998, the rights and remedies of tenant for a violation of this section by the landlord shall include those available pursuant to Sections 1942, 1942.4, and 1942.5, an action for breach of contract, and an action for injunctive relief pursuant to Section 526 of the Code of Civil Procedure. Additionally, in an unlawful detainer action, after a default in the payment of rent, a tenant may raise the violation of this section as an affirmative defense and shall have a

right to the remedies provided by Section 1174.2 of the Code of Civil Procedure.

(d) A violation of this section shall not broaden, limit, or otherwise affect the duty of care owed by a landlord pursuant to existing law, including any duty that may exist pursuant to Section 1714. The delayed applicability of the requirements of subdivision (a) shall not affect a landlord's duty to maintain the premises in safe condition.

(e) Nothing in this section shall be construed to affect any authority of any public entity that may otherwise exist to impose any additional security requirements upon a landlord.

(f) This section shall not apply to any building which has been designated as historically significant by an appropriate local, state, or federal governmental jurisdiction.

(g) Subdivisions (a) and (b) shall not apply to any building intended for human habitation which is managed, directly or indirectly, and controlled by the Department of Transportation. This exemption shall not be construed to affect the duty of the Department of Transportation to maintain the premises of these buildings in a safe condition or abrogate any express or implied statement or promise of the Department of Transportation to provide secure premises. Additionally, this exemption shall not apply to residential dwellings acquired prior to July 1, 1997, by the Department of Transportation to complete construction of state highway routes 710 and 238 and related interchanges.

CHAPTER 538

An act to amend Section 41806 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 41806 of the Health and Safety Code is amended to read:

41806. Nothing in this article shall be construed as prohibiting any of the following:

(a) Burning for the disposal of the combustible or flammable solid waste of a single- or two-family dwelling on its premises.

(b) Open outdoor fires used only for cooking food for human beings or for recreational purposes.

(c) The burning, in a respectful and dignified manner, of an unserviceable American flag that is no longer fit for display.

CHAPTER 539

An act to amend Sections 1743 and 1748 of, and to add Section 1746.1 to, the Business and Professions Code, relating to dentistry.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1743 of the Business and Professions Code is amended to read:

1743. The committee shall consist of the following nine members:

(a) One member who is a public member of the board; one member who is a licensed dentist and a member of the board's examining committee; one member who is a licensed dentist who is neither a board nor examining committee member; three members who are licensed as registered dental hygienists, at least one of whom is actively employed in a private dental office; and three members who are licensed as registered dental assistants. If available, an individual licensed as a registered dental hygienist in extended functions shall be appointed in place of one of the members licensed as a registered dental hygienist. If available, an individual licensed as a registered dental assistant in extended functions shall be appointed in place of one of the members licensed as a registered dental assistant.

(b) The public member of the board shall not have been licensed under Chapter 4 (commencing with Section 1600) of the Business and Professions Code within five years of the appointment date and shall not have any current financial interest in a dental-related business.

SEC. 2. Section 1746.1 is added to the Business and Professions Code, to read:

1746.1. The committee shall evaluate all suggestions or requests for regulatory changes related to auxiliaries. The committee shall have the authority to hold informational hearings in order to report and make appropriate recommendations to the board, after consultation with departmental legal counsel and the board's chief executive officer. The committee shall include in any report regarding a proposed regulatory change, at a minimum, the specific language or the proposed change or changes and the reasons therefor and any facts supporting the need for the change.

SEC. 3. Section 1748 of the Business and Professions Code is amended to read:

1748. Recommendations by the committee pursuant to this article shall be approved, modified, or rejected by the board within 90 days of submission of the recommendation to the board. If the board rejects or significantly modifies the intent or scope of the

recommendation, the committee may request that the board provide its reasons in writing for rejecting or significantly modifying the recommendation.

CHAPTER 540

An act to amend Sections 10153.6 and 10232 of, and to add Sections 10234.5, 10236.4, and 10236.5 to, the Business and Professions Code, relating to real estate.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 10153.6 of the Business and Professions Code is amended to read:

10153.6. All real estate broker licenses issued by the commissioner shall be for a period of four years.

Applicants shall qualify in the appropriate examination and satisfy all other requirements prior to issuance of the license.

The four-year license may be renewed upon filing the required application and fee, and complying with the provisions of Article 2.5 (commencing with Section 10170) and Section 10236.7.

SEC. 2. Section 10232 of the Business and Professions Code is amended to read:

10232. (a) Except as otherwise expressly provided, the provisions of Sections 10232.2 and 10232.25 are applicable to every real estate broker who intends or reasonably expects in a successive 12 months to do any of the following:

(1) Negotiate a combination of 10 or more of the following transactions pursuant to subdivision (d) or (e) of Section 10131 or Section 10131.1 in an aggregate amount of more than one million dollars ($1,000,000):

(A) Loans secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(B) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(C) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property as the owner of those notes or contracts.

(2) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars ($250,000) or more on behalf of owners of promissory notes secured directly or collaterally by liens on real property, owners of real property sales contracts, or both.

(3) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars ($250,000) or more on behalf of obligors of promissory notes secured directly or collaterally by liens on real property, lenders of real property sales contracts, or both.

Persons under common management, direction or control in conducting the activities enumerated above shall be considered as one person for the purpose of applying the above criteria.

(b) The negotiation of a combination of two or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than two hundred fifty thousand dollars ($250,000) in any three successive months or a combination of five or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than five hundred thousand dollars ($500,000) in any successive six months shall create a rebuttable presumption that the broker intends to negotiate new loans and sales and exchanges of an aggregate amount that will meet the criteria of subdivision (a).

(c) In determining the applicability of Sections 10232.2 and 10232.25, loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, shall not be counted in determining whether the broker meets the criteria of subdivisions (a) and (b) if any of the following apply:

(1) The lender or purchaser is any of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veterans' Administration.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, commercial finance lender, personal property broker, consumer finance lender, or insurer doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, or insurers, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) An institutional investor that issues mortgage-backed securities, as specified in paragraph (11) of subdivision (i) of Section 50003 of the Financial Code.

(I) A licensed real estate broker selling all or part of the loan, the note, or the contract to a lender or purchaser specified in subparagraphs (A) to (H), inclusive, of this subdivision.

(2) The loan or sale is negotiated, or the loan or contract is being serviced for the owner, under authority of a permit issued pursuant to the provisions of Article 6 (commencing with Section 10237) or applicable provisions of the Corporate Securities Law of 1968 (Section 25000 et seq. of the Corporations Code).

(3) The transaction is subject to the requirements of Article 3 (commencing with Section 2956) of Chapter 2 of Title 14 of Part 4 of the Civil Code.

(d) If two or more real estate brokers who are not under common management, direction, or control, cooperate in the negotiation of a loan or the sale or exchange of a promissory note or real property sales contract and share in the compensation for their services, the dollar amount of the transaction shall be allocated according to the ratio that the compensation received by each broker bears to the total compensation received by all brokers for their services in negotiating the loan or sale or exchange.

(e) A real estate broker who on the effective date of this section satisfies the criteria of subdivision (a) or (b) shall, within 30 days thereafter, notify the Department of Real Estate in writing of that fact. A broker who first meets any of the criteria of subdivision (a) or (b) after January 1, 1982, shall notify the department in writing within 30 days after that determination is made.

SEC. 3. Section 10234.5 is added to the Business and Professions Code, to read:

10234.5. In addition to the requirements of Section 10234, in the placing of any loan, a broker shall deliver conformed copies of any deed of trust to both the investor or lender and the borrower within a reasonable amount of time from the date of recording.

SEC. 4. Section 10236.4 is added to the Business and Professions Code, to read:

10236.4. (a) In compliance with Section 10235.5, every licensed real estate broker shall also display his or her license number on all advertisements where there is a solicitation for borrowers or potential investors. In addition, the broker shall disclose in any such

advertisement the license information telephone number established by the department.

(b) The real estate broker shall additionally disclose both the license number and license information telephone number whenever a borrower or investor signs any documents related to a loan negotiated by the broker.

(c) This section shall become operative July 1, 1998.

SEC. 5. Section 10236.5 is added to the Business and Professions Code, to read:

10236.5. A real estate broker shall notify the department when he or she is no longer servicing or arranging loans subject to the reporting requirements of Section 10232. If a broker has already made reports required by this article within the year, he or she shall continue reports for that year, but shall notify the department prior to the expiration of that year that he or she will no longer be servicing or arranging loans for which reports are required. The department's records, including those which may be disclosed by calling the license information telephone number of the department, may then be appropriately updated.

CHAPTER 541

An act to amend Section 1382 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1382 of the Penal Code is amended to read:

1382. (a) The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases:

(1) When a person has been held to answer for a public offense and an information is not filed against that person within 15 days.

(2) When a defendant is not brought to trial in a superior court within 60 days after the finding of the indictment, filing of the information, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2, or, in case the cause is to be tried again following a mistrial, an order granting a new trial from which an appeal is not taken, or an appeal from the superior court, within 60 days after the mistrial has been declared, after entry of the order granting the new trial, or after the filing of the remittitur in the trial court, or after the issuance of a writ or order which, in effect, grants a new trial, within 60 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney, or within 90 days after notice of the writ or

order is filed in the trial court and served upon the prosecuting attorney in any case where the district attorney chooses to resubmit the case for a preliminary examination after an appeal or the issuance of a writ reversing a judgment of conviction upon a plea of guilty prior to a preliminary hearing in a municipal or justice court. However, an action shall not be dismissed under this paragraph if either of the following circumstances exist:

(A) The defendant enters a general waiver of the 60-day trial requirement. A general waiver of the 60-day trial requirement entitles the superior court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver in the superior court, the defendant shall be brought to trial within 60 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

Whenever a case is set for trial after a defendant enters either a general waiver as to the 60-day trial requirement or requests or consents, expressed or implied, to the setting of a trial date beyond the 60-day period pursuant to this paragraph, the court may not grant a motion of the defendant to vacate the date set for trial and to set an earlier trial date unless all parties are properly noticed and the court finds good cause for granting that motion.

(3) Regardless of when the complaint is filed, when a defendant in a misdemeanor case in an inferior court is not brought to trial within 30 days after he or she is arraigned or enters his or her plea, whichever occurs later, if the defendant is in custody at the time of arraignment or plea, whichever occurs later, or in all other cases, within 45 days after the defendant's arraignment or entry of the plea, whichever occurs later, or in case the cause is to be tried again following a mistrial, an order granting a new trial from which no appeal is taken, or an appeal from the inferior court, within 30 days after the mistrial has been declared, after entry of the order granting the new trial, or after the remittitur is filed in the trial court or, if the new trial is to be held in the superior court, within 30 days after the judgment on appeal becomes final. However, an action shall not be dismissed under this subdivision if any of the following circumstances exist:

(A) The defendant enters a general waiver of the 30-day or 45-day trial requirement. A general waiver of the 30-day or 45-day trial requirement entitles the inferior court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all

parties, later withdraws his or her waiver in the inferior court, the defendant shall be brought to trial within 30 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 30-day or 45-day period. In the absence of an express general time waiver from the defendant, the inferior court shall set a trial date. Whenever a case is set for trial beyond the 30-day or 45-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

(C) The defendant in a misdemeanor case has been ordered to appear on a case set for hearing prior to trial, but the defendant fails to appear on that date and a bench warrant is issued, or the case is not tried on the date set for trial because of the defendant's neglect or failure to appear, in which case the defendant shall be deemed to have been arraigned within the meaning of this subdivision on the date of his or her subsequent arraignment on a bench warrant or his or her submission to the court.

(b) Whenever a defendant has been ordered to appear in superior court on a case set for trial or set for a hearing prior to trial, if the defendant fails to appear on that date and a bench warrant is issued, the defendant shall be brought to trial within 60 days after the defendant next appears in the superior court unless a trial date previously had been set which is beyond that 60-day period.

(c) If the defendant is not represented by counsel, the defendant shall not be deemed under this section to have consented to the date for the defendant's trial unless the court has explained to the defendant his or her rights under this section and the effect of his or her consent.

CHAPTER 542

An act to amend Section 1529.2 of the Health and Safety Code, and to add Section 16001.5 to the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Children entering the child protective services (CPS) system, due to lifelong exposure to chaos, neglect, fear, physical assault, and undersocialization, are at great risk for having significant physical, emotional, behavioral, cognitive, and social problems. The current

process is unable to efficiently and systematically assess functioning in these various domains for individual children entering the system. Lack of a systematic screen of high risk areas has led to a reactive approach to placement and service provision such that disposition is frequently made on the basis of availability of beds and treatment is often crisis management.

(b) The current reactive system and program structure interfere with the mission of CPS and with the efficient use of the few resources available to help these vulnerable children. The long-term impact of this inefficiency is costly, both financially and in human terms. The indelible relationship between maltreatment and violence, substance abuse, mental health problems, and other neuropsychiatric disorders has been well established. If CPS is to truly meet its mission to protect children, a more proactive assessment, placement, and service-obtaining mechanism must be developed.

(c) Foster parents have a unique window of opportunity to impact the lives of children who need encouragement, a feeling of self-worth, and positive self-esteem, which may last them a lifetime.

(d) Research in self-esteem has swelled in the last decade. Research tells us that a solid foundation of self-esteem is a powerful deterrent to social undesirables such as dropping out, truancy, juvenile delinquency, teenage pregnancy, chemical dependency, gang affiliation, and adolescent suicide. High self-esteem is critical in dealing with these problems because it acts as a buffer against pressures and trauma. Children with higher feelings of self-worth apparently cope better during difficult times. They are able to manage their lives and deal with their shortcomings much more effectively.

(e) It is well-established that positive self-esteem is a better predictor of achievement than are achievement tests themselves. An extensive study on self-image and achievement concluded that the assumption that human ability is the most important factor in achievement is questionable, and that a student's attitude limits the level of his or her achievement in school. Numerous researchers have examined the relationship between academic achievement and self-concept. With a few exceptions, the findings have indicated a significant and positive relationship between the two variables involved. High self-concept is concomitant with high achievement, low self-concept with low achievement.

(f) Individuals with high self-esteem offer help and behave more responsibly toward others. Data supports the position that there is a significant relationship between low self-esteem and depression in children.

(g) Feelings of low self-esteem often either cause or contribute to anxiety, defensiveness, neurosis, and ultimately drug and alcohol substance abuse.

(h) There is a relationship between low self-esteem and delinquency as well as a correlation between an increase in self-esteem and a diminishing of delinquent behavior.

(i) Studies have correlated low self-esteem with infrequent use of contraceptives by females. Females with high self-esteem are more apt to rely on contraception to avoid pregnancy. Adolescents who choose not to use contraceptives and who later become teenage mothers are significantly more likely to have reported self-devaluing experiences and are less likely to perceive themselves as competent.

(j) Everyone involved in the foster care system must recognize the importance of self-esteem when working with foster youth.

SEC. 2. Section 1529.2 of the Health and Safety Code is amended to read:

1529.2. (a) In addition to the foster parent training provided pursuant to Section 903.7 of the Welfare and Institutions Code, foster family agencies shall supplement the community college training by providing a program of training for their certified foster families.

(b) (1) Every licensed foster parent shall complete a minimum of 12 hours of foster parent training, as prescribed in paragraph (3), before the placement of any foster children with the foster parent. In addition, a foster parent shall complete a minimum of eight hours of foster parent training annually as prescribed in paragraph (4). No child shall be placed in a foster family home unless these requirements are met by the persons in the home who are serving as the foster parents.

(2) (A) Upon the request of the foster parent for a hardship waiver from the postplacement training requirement or a request for an extension of the deadline, the county may, at its option, on a case-by-case basis, waive the postplacement training requirement or extend any established deadline for a period not to exceed one year, if the postplacement training requirement presents a severe and unavoidable obstacle to continuing as a foster parent. Obstacles for which a county may grant a hardship waiver or extension are:

(i) Lack of access to training due to the cost or travel required.

(ii) Family emergency.

(B) Before a waiver or extension may be granted, the foster parent should explore the opportunity of receiving training by video or written materials.

(3) The initial preplacement training shall include, but not be limited to, training courses that cover all of the following:

(A) An overview of the child protective system.

(B) The effects of child abuse and neglect on child development.

(C) Positive discipline and the importance of self-esteem.

(D) Health issues in foster care.

(E) Accessing education and health services available to foster children.

(4) The postplacement annual training shall include, but not be limited to, training courses that cover all of the following:

(A) Age-appropriate child development.
(B) Health issues in foster care.
(C) Positive discipline and the importance of self-esteem.
(D) Emancipation and independent living skills if a foster parent is caring for youth.

(5) Foster parent training may be attained through a variety of sources, including community colleges, counties, hospitals, foster parent associations, the California State Foster Parent Association's Conference, adult schools, and certified foster parent instructors.

(6) A candidate for placement of foster children shall submit a certificate of training to document completion of the training requirements. The certificate shall be submitted with the initial consideration for placements and provided at the time of the annual visit by the licensing agency thereafter.

(c) Nothing in this section shall preclude a county from requiring county-provided preplacement or postplacement foster parent training in excess of the requirements in this section.

SEC. 3. Section 16001.5 is added to the Welfare and Institutions Code, to read:

16001.5. The State Department of Social Services shall annually distribute information declaring the importance of promoting self-esteem with respect to foster children to all of the following:

(a) Each county independent living program administrator.
(b) Each licensed foster family agency, group home, and small family home.
(c) Each county welfare department.
(d) Each county director of child protective services.
(e) Each county director of social services.
(f) Each county foster home services director.
(g) The Director of the Community Care Licensing Division of the State Department of Social Services.
(h) The Director of State Adoptions Branch of the State Department of Social Services.

CHAPTER 543

An act to amend Section 112895 of the Health and Safety Code, relating to food labeling.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 112895 of the Health and Safety Code is amended to read:

112895. (a) It is unlawful to manufacture, sell, offer for sale, give away, or to possess imitation olive oil in California.

(b) This section does not prohibit the blending of olive oil with other edible oils, if the blend is not labeled as olive oil or imitation olive oil, is clearly labeled as a blended vegetable oil, and if the contents and proportions of the blend are prominently displayed on the container's label.

(c) Any olive oil produced, processed, sold, offered for sale, given away, or possessed in California, that indicates on its label "California Olive Oil," or uses words of similar import that indicate that California is the source of the oil, shall be made of oil derived solely from olives grown in California.

(d) Any olive oil produced, processed, sold, offered for sale, given away, or possessed in California, that indicates on its label that it is from an area that is one of the approved American Viticultural Areas as set forth in Part 9 (commencing with Sec. 9.1) of Title 27 of the Code of Federal Regulations shall be made of oil 75 percent of which is derived solely from olives grown in that approved American Viticultural Area.

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 544

An act to amend Section 25600 of, and to add Sections 23363.1 and 23363.2 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 23363.1 is added to the Business and Professions Code, to read:

23363.1. (a) A distilled spirits manufacturer's license authorizes the licensee to conduct tastings of distilled spirits produced or bottled

by, or produced or bottled for, the licensee, on or off the licensee's premises. Distilled spirits tastings may be conducted by the licensee off the licensee's premises only for an event sponsored by a nonprofit organization and only if persons attending the event are affiliated with the sponsor. No distilled spirits shall be sold or solicited for sale in that portion of the premises where the distilled spirits tasting is being conducted. Notwithstanding Section 25600, the licensee may provide distilled spirits without charge for any tastings conducted pursuant to this section.

(b) For purposes of this section:

(1) "Nonprofit organization" does not include any community college or other institution of higher learning, as defined in the Education Code, nor does it include any officially recognized club, fraternity, or sorority, whether or not that entity is located on or off the institution's campus.

(2) "Affiliated with the sponsor" means directors, officers, members, employees, and volunteers of bona fide charitable, fraternal, political, religious, trade, service, or similar nonprofit organizations and their invited guests. Persons "affiliated with the sponsor" also includes up to three guests invited by persons described in this paragraph.

(c) The sponsoring organization shall first obtain a permit from the department.

(d) The department may adopt rules and regulations as it determines to be necessary for the administration of this section.

SEC. 2. Section 23363.2 is added to the Business and Professions Code, to read:

23363.2. (a) A distilled spirits manufacturer not licensed in California may designate in writing a California licensee, other than the holder of any retail license, to conduct tastings of distilled spirits produced or bottled by, or produced or bottled for, the manufacturer, off the designated licensee's premises only for an event sponsored by a nonprofit organization and only if persons attending the event are affiliated with the sponsor. No distilled spirits shall be sold or solicited for sale in that portion of the premises where the distilled spirits tasting is being conducted. Notwithstanding Section 25600, the designated licensee may provide distilled spirits without charge for any tastings conducted pursuant to this section.

(b) For purposes of this section:

(1) "Nonprofit organization" does not include any community college or other institution of higher learning, as defined in the Education Code, nor does it include any officially recognized club, fraternity, or sorority whether or not that entity is located on or off the institution's campus.

(2) "Affiliated with the sponsor" means directors, officers, members, employees, and volunteers of bona fide charitable, fraternal, political, religious, trade, service, or similar nonprofit organizations and their invited guests. Persons "affiliated with the

sponsor" also includes up to three guests invited by persons described in this paragraph.

(c) The sponsoring organization shall first obtain a permit from the department.

(d) The department may adopt rules and regulations as it determines to be necessary for the administration of this section.

SEC. 3. Section 25600 of the Business and Professions Code is amended to read:

25600. (a) (1) No licensee shall, directly or indirectly, give any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided by rules that shall be adopted by the department to implement this section or as authorized by this division.

(2) (A) Notwithstanding paragraph (1), for purposes of this section, a refund to, or exchange of products for, a dissatisfied consumer by a licensee authorized to sell to consumers shall not be deemed a premium, gift, or free goods given in connection with the sale or distribution of an alcoholic beverage.

(B) A winegrower may advertise or otherwise offer consumers a guarantee of product satisfaction only in newsletters or other publications of the winegrower or at the winegrower's premises. A winegrower may refund to a dissatisfied consumer the entire purchase price of wine produced by that winegrower and sold to that consumer, regardless of where the wine was purchased.

(b) No rule of the department may permit a licensee to give any premium, gift, or free goods of greater than inconsequential value in connection with the sale or distribution of beer. With respect to beer, premiums, gifts, or free goods, including advertising specialties that have no significant utilitarian value other than advertising, shall be deemed to have greater than inconsequential value if they cost more than twenty-five cents ($0.25) per unit, or cost more than fifteen dollars ($15) in the aggregate for all those items given by a single supplier to a single retail premises per calendar year.

(c) With respect to distilled spirits and wines, a licensee may furnish, give, rent, loan, or sell advertising specialties to a retailer, provided those items bear conspicuous advertising required of a sign and the total value of all retailer advertising specialties furnished by a supplier, directly or indirectly, to a retailer do not exceed fifty dollars ($50) per brand in any one calendar year per retail premises. The value of a retailer advertising specialty is the actual cost of that item to the supplier who initially purchased it, excluding transportation and installation costs. The furnishing or giving of any retailer advertising specialty shall not be conditioned upon the purchase of the supplier's product. Retail advertising specialties given or furnished free of charge may not be sold by the retail licensee. No rule of the department may impose a dollar limit for consumer advertising specialties furnished by a distilled spirits

supplier to a retailer or to the general public of less than five dollars ($5) per unit original cost to the supplier who purchased it.

CHAPTER 545

An act to amend Section 56728.9 of the Education Code, relating to special education.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 56728.9 of the Education Code is amended to read:

56728.9. (a) Notwithstanding any other provision of this article, any special education local plan area that is a single district and that is severely impacted by pupils who reside in licensed children's institutions, as defined in Section 56155.5, shall be entitled to a support services amount calculated pursuant to Section 56734, except that the quotient computed pursuant to Section 56733 shall be multiplied by 150 percent for classes in which a majority of the pupils enrolled reside in licensed children's institutions, if the special education local plan area meets all of the requirements of this section.

(b) A special education local plan area is severely impacted, for purposes of this section, if all of the following requirements are satisfied:

(1) Pupils who reside in licensed children's institutions represent more than 15 percent of the special education enrollment of the special education local plan area.

(2) Special education enrollment of pupils who reside in licensed children's institutions has increased by more than 50 percent since 1985.

(3) The special education local plan area does not enroll more than 10 percent of its pupils who do not reside in licensed children's institutions in special education programs.

(c) Any special education local plan area that is severely impacted pursuant to subdivision (b) may make the calculation adjustments provided by subdivision (a) only for those classes in which a majority of the pupils enrolled during the 1989–90 school year resided in licensed children's institutions.

(d) The calculation provided by this section is a base year calculation, based on the enrollment in classes in the 1989–90 school year, creating a limit on funding adjustments provided by this section. Special education local plan areas shall not be required to maintain the 1989–90 level of eligible classes in order to be eligible for the calculation in future years. Special education local plan areas are

encouraged to place pupils who reside in licensed children's institutions in the educational environment that best meets the pupil's needs in keeping with the least restrictive environment requirements of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and the Master Plan for Special Education.

(e) A special education local plan area may claim an amount of funding in a fiscal year that is not greater than the amount claimed pursuant to this section in the prior fiscal year. The amount claimed may be increased only if a specific appropriation is made for that purpose in that fiscal year. A special education local plan area that received funding for purposes of this section in the 1994–95 fiscal year shall continue to receive that funding in a subsequent fiscal year only if it continues to meet the qualifications of this section and an appropriation is made for those purposes in the annual Budget Act. A special education local plan area that did not receive funding for purposes of this section in the 1994–95 fiscal year that subsequently qualifies for that funding, shall not receive that funding unless an additional appropriation is made for those purposes in the annual Budget Act.

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

CHAPTER 546

An act to amend Sections 2191.4, 2195, 2503.2, 2605, 2606, 2607, 2611.6, 2910.1, 3691, 4836.5, 4837.5, and 20583 of the Revenue and Taxation Code, and to amend Section 9880 of the Vehicle Code, relating to taxation.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 2191.4 of the Revenue and Taxation Code is amended to read:

2191.4. From the time of filing the certificate for record pursuant to Section 2191.3, the amount required to be paid together with interest and penalty constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in the certificate or acquired by him or her in that name before the lien expires, except that the lien upon unsecured property shall not be valid against a purchaser for value or encumbrancer without actual knowledge of the lien when he or she acquires his or her interest in the property. The lien has the force, effect, and priority of a judgment lien and continues for 10 years from

the time of the recording of the certificate unless sooner released or otherwise discharged.

Within 10 years from the date of the recording of the certificate or within 10 years from the date of the last extension of the lien, the lien may be extended by filing for record a new certificate in the office of any county recorder and from the time of the filing the lien as obtained under the original certificate shall be extended to all personal and real property in the county owned by the assessee for 10 years unless sooner released or otherwise discharged. Execution shall issue upon the lien upon request of the tax collector or the official collecting taxes on the unsecured roll in the same manner as execution may issue upon other judgments, and sales shall be held under that execution as prescribed in the Code of Civil Procedure.

SEC. 2. Section 2195 of the Revenue and Taxation Code is amended to read:

2195. Thirty years after any tax becomes a lien, if the lien has not been otherwise removed, the lien ceases to exist and the tax is conclusively presumed to be paid. The official having charge of the records of the tax shall mark it "Conclusively presumed paid." Property for which a power to sell has been recorded for nonpayment of taxes is not subject to the provisions of this section.

SEC. 3. Section 2503.2 of the Revenue and Taxation Code is amended to read:

2503.2. (a) The tax collector for any city, county, or city and county may, in his or her discretion, accept electronic funds transfers in payment of any tax or assessment, or on a redemption.

(b) The tax collector for any city, county, or city and county may, in his or her discretion, require any taxpayer, or any paying agent of a taxpayer or taxpayers, who makes an aggregate payment of fifty thousand dollars ($50,000) or more on the two most recent regular installments on the secured roll or on the one installment of the most recent unsecured tax roll, to make subsequent payments by electronic funds transfer.

(c) Any taxpayer or paying agent making payment by electronic funds transfer shall provide any supporting documentation and electronic information as requested by the tax collector. An electronic funds transfer made pursuant to this section shall be made to the bank account designated by the tax collector.

(d) Any costs incurred by the tax collector as a result of the acceptance of electronic funds transfers pursuant to this section shall be considered administrative costs of tax collection, except that if for any reason the electronic funds transfer is not completed, those costs shall be recovered as provided in subdivision (g).

(e) The acceptance of an electronic funds transfer shall constitute payment of a tax, assessment, or redemption as of the date of acceptance when, but not before, the transfer has been completed. An electronic funds transfer is completed by acceptance by the bank

designated by the tax collector of the payment specified by the originator's payment order.

(f) If an electronic funds transfer is not accepted for any reason, any record of payment entered on any official record indicating the acceptance of that transfer shall be canceled, and the tax or assessment shall be a lien as if no payment has been attempted. When a cancellation of a record of payment is made, the canceling officer shall record the cancellation on the record that contained the notation of payment, and immediately shall cause a written notice of cancellation to be sent to the person attempting the electronic funds transfer.

(g) Upon notice of nonacceptance of an electronic funds transfer, the tax collector may charge the person who attempted the electronic funds transfer a fee not to exceed the costs of processing the transfer, providing notice of nonacceptance to that person, and making required cancellations on the tax roll. The amount of any fee charged pursuant to this subdivision shall be set by the governing body of the relevant city, county, or city and county, and may be added to the tax bill and collected in the same manner as costs recovered pursuant to Section 2621.

SEC. 4. Section 2605 of the Revenue and Taxation Code is amended to read:

2605. The following taxes on the secured roll are due and payable November 1:

(a) All taxes on personal property.

(b) Half the taxes on real property, and if the amount is not evenly divisible by two, the odd cent is also due and payable unless the roll shows the odd cent as part of the second installment.

SEC. 5. Section 2606 of the Revenue and Taxation Code is amended to read:

2606. The second half of taxes on real property on the secured roll is due and payable February 1.

SEC. 6. Section 2607 of the Revenue and Taxation Code is amended to read:

2607. The entire tax on real property may be paid when the first installment is due and payable or at any time thereafter until the properties on the current roll become tax defaulted. The second installment may be paid separately only if the first installment has been paid. The tax collector shall accept payment of current year taxes even though prior year delinquencies on the real property may exist. The acceptance of that payment shall not affect the validity of any sale in satisfaction of a lien for defaulted taxes.

SEC. 7. Section 2611.6 of the Revenue and Taxation Code is amended to read:

2611.6. The following information shall be included in each county tax bill, whether mailed or electronically transmitted, or in a separate statement accompanying the bill:

(a) The full value of locally assessed property, including assessments made for irrigation district purposes in accordance with Section 26625.1 of the Water Code.

(b) The tax rate required by Article XIII A of the California Constitution.

(c) The rate or dollar amount of taxes levied in excess of the 1-percent limitation to pay for voter-approved indebtedness incurred before July 1, 1978, or bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the voters on or after June 4, 1986.

(d) The amount of any special taxes and special assessments levied.

(e) The amount of any tax rate reduction pursuant to Section 96.8, with the notation: "Tax reduction by (name of jurisdiction)."

(f) The amount of any exemptions. Exemptions reimbursable by the state shall be shown separately.

(g) The total taxes due and payable on the property covered by the bill.

(h) Instructions on tendering payment, including the name and mailing address of the tax collector.

(i) Information specifying all of the following:

(1) That if the taxpayer disagrees with the assessed value as shown on the tax bill, the taxpayer has the right to an informal assessment review by contacting the assessor's office.

(2) That if the taxpayer and the assessor are unable to agree on a proper assessed value pursuant to an informal assessment review, the taxpayer has the right to file an application for reduction in assessment for the following year with the county board of equalization or the assessment appeals board, as applicable, during the period from July 2 to September 15, inclusive.

(3) The address of the clerk of the county board of equalization or the assessment appeals board, as applicable, at which forms for an application for reduction in assessment may be obtained.

SEC. 8. Section 2910.1 of the Revenue and Taxation Code is amended to read:

2910.1. The tax collector may, no later than 30 days prior to the date on which taxes are delinquent and as soon as reasonably possible after receipt of the extended assessment roll, mail a tax bill for every assessment on the unsecured roll on which taxes are due, unless the total tax bill amount due is too small to justify the cost of collection. Failure to receive a tax bill shall not relieve the lien of taxes, nor shall it prevent the imposition of penalties imposed by this code. However, the penalty imposed for delinquent taxes as provided by any section in this code shall be canceled if the assessee convinces the tax collector that he or she did not receive the tax bill mailed to the address provided on the roll.

SEC. 9. Section 3691 of the Revenue and Taxation Code is amended to read:

3691. (a) (1) Five years or more after the property has become tax defaulted, the tax collector shall have the power to sell and shall attempt to sell in accordance with Section 3692 all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of the parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale. In the case of tax-defaulted property that has been damaged by a disaster in an area declared to be a disaster area by local, state, or federal officials and whose damage has not been substantially repaired, the five-year period set forth in this subdivision shall be tolled until five years have elapsed from the date the damage to the property was incurred.

(2) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(b) (1) (A) Three years or more after the property has become tax defaulted and subject to a nuisance abatement lien, the tax collector shall have the power to sell and may sell all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale.

(B) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(2) Before the tax collector sells vacant residential developed property pursuant to this subdivision, actual notice, by certified mail, shall be provided to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

(3) Before the tax collector sells vacant residential developed property pursuant to this subdivision, notice of the sale shall be given in the manner specified by Section 3704.7.

SEC. 10. Section 4836.5 of the Revenue and Taxation Code is amended to read:

4836.5. In the event any correction authorized under this article has the effect of increasing the assessment, the auditor shall apply a tax rate to that increase at whatever tax rate was in existence in the year in which the error was made and shall apply the assessment ratio that was in existence in the year in which the error was made. All increased amounts of taxes shall be entered on the roll prepared or being prepared for the current assessment year and shall thereafter be treated and collected like other taxes on the roll. After the lien

date, and with the approval of the tax collector, the increase may be added to the current roll being collected. However, if the correction affects taxes on the secured roll for any year and subsequent to the entry of the original assessment but prior to the date of the correction the real property on which the taxes constitute a lien has been transferred or conveyed to a bona fide purchaser for value or becomes subject to a bona fide encumbrance for value, the increased amount of taxes shall not create, impose or constitute a lien on the real property and shall be entered on the unsecured roll in the name of the assessee at the time the error was made and shall thereafter be treated and collected like other taxes on the roll.

The entry on the unsecured roll shall be followed with "Correction to account or Parcel Number _____ for the 19__–__ assessment year pursuant to Section(s) _____ of the Revenue and Taxation Code." The foregoing entry may be made on a document separate from the roll if reference is made on the roll to the document wherein the entry is made.

SEC. 11. Section 4837.5 of the Revenue and Taxation Code is amended to read:

4837.5. (a) Notwithstanding any other provision of law, taxes due, whether secured or unsecured, on escape assessments for prior fiscal years may be paid over a four-year period at the option of the assessee if: (1) the additional tax is over five hundred dollars ($500), and (2) a written request for installment payment is filed by the assessee with the tax collector prior to the time the second installment of taxes on the secured roll becomes delinquent, or by the last day of the month following the month in which the tax bill is mailed, whichever is later. The tax collector shall include with the property tax bill a notice of the payment provisions of this section. For unsecured taxes, the written request for installment payment shall be filed with the tax collector prior to the date on which those taxes become delinquent.

(b) If payment by installments is requested, 20 percent or more of the tax shall be paid no later than the deadline for filing the written request. The current taxes and prior year taxes with penalties and costs thereon shall be paid with or prior to the initial installment payment. In each succeeding fiscal year, the assessee shall pay, before the delinquency date of the second installment of current taxes on the secured roll, all current year taxes, and a sum at least sufficient to reduce the outstanding balance of the tax by 20 percent of the original amount. In the case of unsecured taxes, the required annual installment shall be paid on or before August 31.

(c) Interest at the rate of three-fourths of 1 percent per month, calculated from the date of the deadline for filing the written request to the date that payment is due, shall be added to the outstanding balance, if the tax collector determines that the escape or underassessment was due, in whole or in part, to the error, omission, or fault of the assessee.

(d) No additional penalties shall be charged as long as installment payments are made timely; and, in the case of secured taxes, as long as all payments are made timely, an affidavit regarding the property shall not be published pursuant to Section 3371.

(e) If any installment is not paid timely, or if the property on the secured roll becomes tax defaulted, or if the property changes ownership, or if taxes for the property on the unsecured roll are not paid before becoming delinquent, the balance of the tax remaining to be paid shall immediately become due and payable, and no further installment payments for that escape assessment or correction shall be authorized. The tax collector shall inform the auditor of the defaulted, off-roll installment plan and of the delinquent amount remaining unpaid.

(f) The auditor shall add the unpaid balance, plus all penalties and costs thereon, to the current roll, adjust the tax collector's charge accordingly, and the remaining balance of the tax shall become subject to all of the provisions of this division applicable to delinquent taxes.

(g) The tax collector shall maintain records listing the current status of all the installment accounts authorized under this section. The status of each installment account shall be entered on the current roll and the tax collector may file for record with the county recorder a certificate pursuant to Section 2191.3.

(h) When the installment account is paid in full before 5 p.m. on June 30 of the year in which the account has become defaulted and the tax collector has filed for record a certificate of lien, the tax collector shall also file for record a release of that lien. Where the account is not paid in full until after June 30 of the year in which the account became defaulted, the filings of the certificates of lien and release of lien shall be subject to recording fees charged to the taxpayer.

(i) The tax collector may establish a fee for the actual cost of processing a request to pay escaped assessments in installments.

SEC. 12. Section 20583 of the Revenue and Taxation Code is amended to read:

20583. (a) "Residential dwelling" means a dwelling occupied as the principal place of residence of the claimant, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, owned by the claimant, the claimant and spouse, or by the claimant and either another individual eligible for postponement under this chapter or an individual described in subdivision (a), (b) or (c) of Section 20511 and located in this state. It shall include condominiums and mobilehomes which are assessed as realty for local property tax purposes. It also includes part of a multidwelling or multipurpose building and a part of the land upon which it is built. In the case of a mobilehome not assessed as real property which is located on land owned by the claimant, residential "dwelling" includes the land on which the mobilehome is situated and so much

of the land surrounding it as reasonably necessary for use of the mobilehome as a home.

(b) As used in this chapter in reference to ownership interests in residential dwellings, "owned" includes (1) the interest of a vendee in possession under a land sale contract provided that the contract or memorandum thereof is recorded and only from the date of recordation of the contract or memorandum thereof in the office of the county recorder where the residential dwelling is located, (2) the interest of the holder of a life estate provided that the instrument creating the life estate is recorded and only from the date of recordation of the instrument creating the life estate in the office of the county recorder where the residential dwelling is located, but "owned" does not include the interest of the holder of any remainder interest or the holder of a reversionary interest in the residential dwelling, (3) the interest of a joint tenant or a tenant in common in the residential dwelling or the interest of a tenant where title is held in tenancy by the entirety or a community property interest where title is held as community property.

(c) For purposes of this chapter, the registered owner of a mobilehome shall be deemed to be the owner of the mobilehome.

(d) Except as provided in subdivision (c), and Chapter 3 (commencing with Section 20625), ownership must be evidenced by an instrument duly recorded in the office of the county where the residential dwelling is located.

(e) "Residential dwelling" does not include any of the following:

(1) Any residential dwelling in which the owners do not have an equity of at least 20 percent of the full value of the property as determined for purposes of property taxation or at least 20 percent of the fair market value as determined by the Controller and where the Controller determines that the state's interest is adequately protected. The 20 percent equity requirement shall be met at the time the claimant or authorized agent files an initial postponement claim and tenders to the tax collector the initial certificate of eligibility described in Sections 20602, 20639.6, and 20640.6.

(2) Any residential dwelling in which the claimant's interest is held pursuant to a contract of sale or under a life estate, unless the claimant obtains the written consent of the vendor under the contract of sale, or the holder of the reversionary interest upon termination of the life estate for the postponement of taxes and the creation of a lien on the real property in favor of the state for amounts postponed pursuant to this act.

(3) Any residential dwelling on which the claimant does not receive a secured tax bill.

(4) Any residential dwelling in which the claimant's interest is held as a possessory interest, except as provided in Chapter 3.5 (commencing with Section 20640).

(5) (A) Except as provided in this section, any residential dwelling on which the property taxes, as defined in Section 20584, are

delinquent at the time the application for postponement under this chapter is made or on which any other property tax or special assessment imposed by a special district or other tax code area is delinquent at the time the application for postponement under this chapter is made.

(B) Any taxes or assessments described in subparagraph (A) which are delinquent on July 1, 1977, shall not disqualify an otherwise eligible dwelling for postponement under this chapter. An application for postponement under this chapter to postpone the payment of property taxes for the 1977–78 fiscal year, shall also constitute an application for the postponement of all those delinquent taxes and assessments, together with any penalties, interest, fees, or other charges resulting from that delinquency and those amounts shall, unless otherwise paid by the claimant, be paid out of the amount appropriated by Section 16100 of the Government Code and shall be added to and become part of the obligation secured by the lien provided by Section 16182 of the Government Code; provided, however, that upon payment of delinquent taxes and assessments for fiscal year 1976–77 out of the amount appropriated by Section 16100, any delinquent penalties, interest, fees or other charges resulting from the delinquency of those taxes and assessments for fiscal year 1976–77 shall be canceled.

(C) For 1978–79 and thereafter, any taxes or assessments described in subparagraph (A) which became delinquent after the claimant was 62 and before the claimant first has established a lien pursuant to Section 16182 of the Government Code shall not disqualify an otherwise eligible dwelling for postponement under this chapter. An application to postpone taxes for 1978–79 or thereafter shall also constitute an application for the postponement of all delinquent taxes and assessments, together with any penalties, interest, fees, or other charges resulting from the delinquency and those amounts shall, unless otherwise paid by the claimant, be paid out of the amount appropriated by Section 16100 of the Government Code and shall be added to and become part of the obligation secured by the lien provided by Section 16182 of the Government Code.

(6) All taxes or assessments described in subparagraph (A) of paragraph (5) which are delinquent on the date this bill takes effect shall not disqualify an otherwise eligible blind or disabled applicant's dwelling from postponement under this chapter. A blind or disabled citizen's application for postponement of property taxes shall not constitute an application for the postponement of any delinquent taxes and assessments, or any penalties, interest, fees or other charges resulting from delinquency. Delinquent taxes of blind or disabled applicants shall not be subject to postponement under this chapter.

SEC. 13. Section 9880 of the Vehicle Code is amended to read:

9880. (a) The department shall not renew the certificate of number of, or allow a transfer of any title to or interest in, a vessel if the county tax collector has notified the department pursuant to

Section 3205 of the Revenue and Taxation Code, that taxes are delinquent upon the vessel, and the department shall not subsequently issue a certificate of number for, or a new certificate of ownership reflecting a transfer of title to or interest in, that vessel until the department receives a certificate of clearance from the county tax collector that the delinquent taxes have been paid on that vessel or until the county tax collector has provided notice to the department that the delinquency has been satisfied.

(b) The department shall record the notice of delinquent taxes on the vessel. If the department is notified by the county tax collector that the delinquency has been satisfied, the department shall, if all other requirements are satisfied, issue a certificate of number for, or a new certificate of ownership reflecting a transfer of title to or interest in, the vessel. The department shall assess a fee upon each county tax collector in an amount that is sufficient to reimburse the department for its actual costs of administering this section.

(c) Whenever a vessel subject to this section is transferred, or not renewed for 26 months, the department shall notify the county tax collector of that fact.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 547

An act to amend Section 1799.111 of the Health and Safety Code, relating to health care.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1799.111 of the Health and Safety Code is amended to read:

1799.111. (a) A licensed general acute care hospital, as defined by subdivision (a) of Section 1250, licensed professional staff of the hospital, or any physician and surgeon, providing emergency medical services to a person at the hospital shall not be civilly or

criminally liable for detaining a person, or for the actions of the person after release from the hospital, if all of the following conditions exist:

(1) The person cannot be safely released from the hospital because, in the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges, clinical privileges, or professional responsibilities provided in Section 1316.5, the person, as a result of a mental disorder, presents a danger to himself or herself, or others, or is gravely disabled. For purposes of this paragraph, "gravely disabled" means an inability to provide for his or her basic personal needs of food, clothing, or shelter.

(2) The hospital staff, treating physician and surgeon, or appropriate licensed mental health professional, have made, and documented, repeated unsuccessful efforts to find appropriate mental health treatment for the person.

(3) The person is not detained beyond eight hours.

(b) Nothing in this section shall affect the responsibility of a general acute care hospital to comply with all state laws and regulations pertaining to the use of seclusion and restraint and psychiatric medications for psychiatric patients. Persons detained under this section shall retain their legal rights regarding consent for medical treatment.

(c) A person detained under this section shall be credited for the time detained, up to eight hours, in the event he or she is placed on a subsequent 72-hour hold pursuant to Section 5150 of the Welfare and Institutions Code.

CHAPTER 548

An act to add Section 10756 to the Water Code, relating to water.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 10756 is added to the Water Code, to read:

10756. (a) On or before April 1, 1998, the department shall prepare and publish, in a bulletin of the department published pursuant to Section 130, a report on the number of agencies that have adopted and implemented groundwater management plans, or that manage groundwater, pursuant to this part or pursuant to any of the following authorities:

(1) Part 2.75 (commencing with Section 10750) as added by Chapter 903 of the Statutes of 1991.

(2) Other statutory authority.

(3) Adjudication.

(4) Local ordinance.

(b) The report shall also include all of the following information:

(1) The number of agencies that do not overlie a groundwater basin or that overlie a basin with groundwater that is not usable.

(2) The number of agencies whose groundwater is managed by another agency.

(3) The number of agencies that have expressed no interest in initiating groundwater management.

(c) The report may include any of the following information, if determined by the department to be available:

(1) The volume or percentage of extracted groundwater that is managed in accordance with a groundwater management plan or other authority described in subdivision (a).

(2) The extent of basinwide coordination.

(3) The number of interstate basins for which a groundwater management plan has been adopted.

(4) Any other information determined by the department to be relevant.

(d) The department shall update the report periodically, as needed.

CHAPTER 549

An act to amend Sections 4001, 4002, 4003, 4004, 4005, 4007, 4008, 4017, 4018, 4021, 4022, 4023, 4024, 4025, 4028, 4029, 4030, 4031, 4033, 4034, 4037, 4040, 4043, 4051, 4052, 4053, 4055, 4056, 4057, 4058, 4060, 4061, 4062, 4063, 4064, 4070, 4071, 4072, 4073, 4074, 4076, 4077, 4080, 4081, 4082, 4100, 4101, 4102, 4103, 4110, 4111, 4112, 4113, 4114, 4115, 4116, 4117, 4118, 4119, 4120, 4122, 4130, 4131, 4132, 4133, 4137, 4138, 4143, 4144, 4150, 4160, 4161, 4162, 4163, 4164, 4170, 4174, 4175, 4180, 4182, 4191, 4197, 4200, 4201, 4202, 4205, 4231, 4232, 4300, 4301, 4303, 4305, 4307, 4309, 4311, 4312, 4320, 4321, 4322, 4326, 4331, 4333, 4339, 4341, 4360, 4361, 4369, 4370, 4372, 4400, 4401, 4402, 19059.5, and 19170 of, to add Sections 4025.1, 4059.5, 4078, 4104, 4105, 4119.5, 4136.5, 4165, 4166, 4167, 4200.5, 4305.5, 4306.5, and 4313 to, to add and repeal Section 4200.1 of, to repeal Sections 4009, 4020, 4186, 4230, and 4233 of, and to repeal and add Sections 4016 and 4136 of, the Business and Professions Code, and to amend Sections 11122 and 11150 of the Health and Safety Code, relating to vocational licensing, and making an appropriation therefor.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 4001 of the Business and Professions Code is amended to read:

4001. (a) There is in the Department of Consumer Affairs a California State Board of Pharmacy in which the administration and enforcement of this chapter is vested. The board consists of 10 members.

(b) The Governor shall appoint seven competent pharmacists, residing in different parts of the state, to serve as members of the board. The Governor shall appoint one public member and the Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member who shall not be a licensee of the board, any other board under this division, or any board referred to in Section 1000 or 3600.

(c) At least five of the seven pharmacist appointees to the board shall be pharmacists who are actively engaged in the practice of pharmacy. Additionally, the membership of the board shall include at least one pharmacist representative from each of the following practice settings: an acute care hospital, a community pharmacy, and a long-term health care or skilled nursing facility.

(d) Members of the board shall be appointed for a term of four years. No person shall serve as a member of the board for more than two consecutive terms. Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which the member was appointed, whichever first occurs. Vacancies occurring shall be filled by appointment for the unexpired term.

(e) Each member of the board shall receive a per diem and expenses as provided in Section 103.

(f) In accordance with Sections 101.1 and 473.1, this section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 1.5. Section 4001 of the Business and Professions Code is amended to read:

4001. (a) There is in the Department of Consumer Affairs a California State Board of Pharmacy in which the administration and enforcement of this chapter is vested. The board consists of 11 members.

(b) The Governor shall appoint seven competent pharmacists, residing in different parts of the state, to serve as members of the board. The Governor shall appoint two public members and the Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member who shall not be a licensee of the board, any other board under this division, or any board referred to in Section 1000 or 3600.

(c) At least five of the seven pharmacist appointees to the board shall be pharmacists who are actively engaged in the practice of pharmacy. Additionally, the membership of the board shall include at least one pharmacist representative from each of the following practice settings: an acute care hospital, a community pharmacy, and a long-term health care or skilled nursing facility.

(d) Members of the board shall be appointed for a term of four years. No person shall serve as a member of the board for more than two consecutive terms. Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which the member was appointed, whichever first occurs. Vacancies occurring shall be filled by appointment for the unexpired term.

(e) Each member of the board shall receive a per diem and expenses as provided in Section 103.

(f) In accordance with Sections 101.1 and 473.1, this section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, 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. 2. Section 4002 of the Business and Professions Code is amended to read:

4002. (a) The board shall elect a president, a vice president, and a treasurer. The officers of the board shall be elected by a majority of the membership of the board.

(b) The principal office of the board shall be located in Sacramento. The board shall hold a meeting at least once in every four months. Six members of the board constitute a quorum.

SEC. 3. Section 4003 of the Business and Professions Code is amended to read:

4003. (a) 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. The executive officer may or may not be a member of the board as the board may determine.

(b) The executive officer shall receive the compensation as established by the board with the approval of the Director of Finance. The executive officer shall also be entitled to travel and other expenses necessary in the performance of his or her duties.

(c) The executive officer shall maintain and update in a timely fashion records containing the names, titles, qualifications, and places of business of all persons subject to this chapter.

(d) The executive officer shall give receipts for all money received by him or her and pay it to the Department of Consumer Affairs, taking its receipt therefor. Besides the duties required by this

chapter, the executive officer shall perform other duties pertaining to the office as may be required of him or her by the board.

(e) In accordance with Sections 101.1 and 473.1, this section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3.5. Section 4003 of the Business and Professions Code is amended to read:

4003. (a) 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. The executive officer may or may not be a member of the board as the board may determine.

(b) The executive officer shall receive the compensation as established by the board with the approval of the Director of Finance. The executive officer shall also be entitled to travel and other expenses necessary in the performance of his or her duties.

(c) The executive officer shall maintain and update in a timely fashion records containing the names, titles, qualifications, and places of business of all persons subject to this chapter.

(d) The executive officer shall give receipts for all money received by him or her and pay it to the Department of Consumer Affairs, taking its receipt therefor. Besides the duties required by this chapter, the executive officer shall perform other duties pertaining to the office as may be required of him or her by the board.

(e) In accordance with Sections 101.1 and 473.1, this section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 4004 of the Business and Professions Code is amended to read:

4004. No member of the board shall teach pharmacy in any of its branches, unless he or she teaches as either one of the following:

(a) A teacher in a public capacity and in a college of pharmacy.

(b) A teacher of an approved continuing education class as, or under the control of, an accredited provider of continuing education.

SEC. 5. Section 4005 of the Business and Professions Code is amended to read:

4005. (a) The board may adopt rules and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public. Included therein shall be the right to adopt rules and regulations as follows: for the proper and more effective enforcement and administration of this chapter; pertaining to the practice of pharmacy; relating to the sanitation of persons and establishments licensed under this chapter; pertaining to establishments wherein any drug or device is compounded,

prepared, furnished, or dispensed; providing for standards of minimum equipment for establishments licensed under this chapter; and pertaining to the sale of drugs by or through any mechanical device.

(b) Notwithstanding any provision of this chapter to the contrary, the board may adopt regulations permitting the dispensing of drugs or devices in emergency situations, and permitting dispensing of drugs or devices pursuant to a prescription of a person licensed to prescribe in a state other than California where the person, if licensed in California in the same licensure classification would, under California law, be permitted to prescribe drugs or devices and where the pharmacist has first interviewed the patient to determine the authenticity of the prescription.

(c) The board may, by rule or regulation, adopt, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession. Every person who holds a license issued by the board shall be governed and controlled by the rules of professional conduct adopted by the board.

(d) The adoption, amendment, or repeal by the board of these or any other board rules or regulations shall be in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 6. Section 4007 of the Business and Professions Code is amended to read:

4007. (a) Nothing in Section 4005 shall be construed as authorizing the board to adopt rules of professional conduct relating to price fixing or advertising of commodities.

(b) Nothing in Section 4005 shall be construed as authorizing the board to adopt any rule or regulation that would require that a pharmacist personally perform any function for which the education, experience, training, and specialized knowledge of a pharmacist are not reasonably required. However, rules and regulations may require that the function be performed only under the effective supervision of a pharmacist who shall have the overall responsibility for supervising all activities that take place in the pharmacy.

SEC. 7. Section 4008 of the Business and Professions Code is amended to read:

4008. (a) Except as provided by Section 159.5, the board may employ inspectors of pharmacy. The inspectors, whether the inspectors are employed by the board or the department's Division of Investigation, may inspect during business hours all pharmacies, medical device retailers, dispensaries, stores, or places in which drugs or devices are compounded, prepared, furnished, dispensed, or stored. Inspectors whose principal duties are the inspection of pharmacies, and premises operated or conducted by a wholesaler, shall be pharmacists.

(b) Notwithstanding subdivision (a), a pharmacy inspector may inspect or examine a physician's office or clinic that does not have a permit under Section 4180 or 4190 only to the extent necessary to determine compliance with and to enforce either Section 4080 or 4081.

(c) (1) Any pharmacy inspector employed by the board or the department's Division of Investigation shall have the authority, as a public officer, to arrest, without warrant, any person whenever the officer has reasonable cause to believe that the person to be arrested has, in his or her presence, violated any provision of this chapter or of Division 10 (commencing with Section 11000) of the Health and Safety Code. If the violation is a felony, or if the arresting officer has reasonable cause to believe that the person to be arrested has violated any provision that is declared to be a felony, although no felony has in fact been committed, he or she may make an arrest although the violation or suspected violation did not occur in his or her presence.

(2) In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting inspector may, instead of taking the person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. That chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

(d) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest that is lawful, or that the arresting officer, at the time of the arrest, had reasonable cause to believe was lawful. No inspector shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

(e) Any inspector may serve all processes and notices throughout the state.

SEC. 7.5. Section 4008 of the Business and Professions Code is amended to read:

4008. (a) Except as provided by Section 159.5, the board may employ inspectors of pharmacy. The inspectors, whether the inspectors are employed by the board or the department's Division of Investigation, may inspect, during business hours all pharmacies, medical device retailers, dispensaries, stores, or places in which drugs or devices are compounded, prepared, furnished, dispensed, or stored. Any board inspector of pharmacy whose principal duties include either (1) the inspection and investigation of pharmacies or pharmacists for alleged violations of this chapter, or (2) the supervision of other inspectors of pharmacy, shall be a pharmacist. For purposes of inspecting or investigating nonpharmacies or

nonpharmacists pursuant to this chapter, a board inspector of pharmacy is not required to be a pharmacist.

(b) Notwithstanding subdivision (a), a pharmacy inspector may inspect or examine a physician's office or clinic that does not have a permit under Section 4180 or 4190 only to the extent necessary to determine compliance with and to enforce either Section 4080 or 4081.

(c) (1) Any pharmacy inspector employed by the board or in the department's Division of Investigation shall have the authority, as a public officer, to arrest, without warrant, any person whenever the officer has reasonable cause to believe that the person to be arrested has, in his or her presence, violated any provision of this chapter or of Division 10 (commencing with Section 11000) of the Health and Safety Code. If the violation is a felony, or if the arresting officer has reasonable cause to believe that the person to be arrested has violated any provision that is declared to be a felony, although no felony has in fact been committed, he or she may make an arrest although the violation or suspected violation did not occur in his or her presence.

(2) In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting inspector may, instead of taking the person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. That chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

(d) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest that is lawful, or that the arresting officer, at the time of the arrest, had reasonable cause to believe was lawful. No inspector shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

(e) Any inspector may serve all processes and notices throughout the state.

SEC. 8. Section 4009 of the Business and Professions Code is repealed.

SEC. 9. Section 4016 of the Business and Professions Code is repealed.

SEC. 10. Section 4016 is added to the Business and Professions Code, to read:

4016. "Administer" means the direct application of a drug or device to the body of a patient or research subject by injection, inhalation, ingestion, or other means.

SEC. 11. Section 4017 of the Business and Professions Code is amended to read:

4017. "Authorized officers of the law" means inspectors of the California State Board of Pharmacy, inspectors of the Food and Drug Branch of the State Department of Health Services, and investigators of the department's Division of Investigation or peace officers engaged in official investigations.

SEC. 12. Section 4018 of the Business and Professions Code is amended to read:

4018. "Board" means the California State Board of Pharmacy.

SEC. 13. Section 4020 of the Business and Professions Code is repealed.

SEC. 14. Section 4021 of the Business and Professions Code is amended to read:

4021. "Controlled substance" means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

SEC. 15. Section 4022 of the Business and Professions Code is amended to read:

4022. "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription" or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

SEC. 16. Section 4023 of the Business and Professions Code is amended to read:

4023. "Device" means any instrument, apparatus, machine, implant, in vitro reagent, or contrivance, including its components, parts, products, or the byproducts of a device, and accessories that are used or intended for either of the following:

(a) Use in the diagnosis, cure, mitigation, treatment, or prevention of disease in a human or any other animal.

(b) To affect the structure or any function of the body of a human or any other animal.

For purposes of this chapter, "device" does not include contact lenses, or any prosthetic or orthopedic device that does not require a prescription.

SEC. 17. Section 4024 of the Business and Professions Code is amended to read:

4024. (a) Except as provided in subdivision (b), "dispense" means the furnishing of drugs or devices upon a prescription from a

physician, dentist, optometrist, podiatrist, veterinarian, or upon an order to furnish drugs or transmit a prescription from a certified nurse midwife, nurse practitioner, physician assistant, or pharmacist acting within the scope of his or her practice.

(b) "Dispense" also means and refers to the furnishing of drugs or devices directly to a patient by a physician, dentist, optometrist, podiatrist, or veterinarian, or by a certified nurse midwife, nurse practitioner, or physician assistant acting within the scope of his or her practice.

SEC. 18. Section 4025 of the Business and Professions Code is amended to read:

4025. "Drug" means any of the following:

(a) Articles recognized in the official United States Pharmacopoeia, official National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement of any of them.

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

(c) Articles (other than food) intended to affect the structure or any function of the body of humans or other animals.

(d) Articles intended for use as a component of any article specified in subdivision (a), (b), or (c).

SEC. 19. Section 4025.1 is added to the Business and Professions Code, to read:

4025.1. "Nonprescription drug" means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

SEC. 20. Section 4028 of the Business and Professions Code is amended to read:

4028. "Licensed hospital" means an institution, place, building, or agency that maintains and operates organized facilities for one or more persons for the diagnosis, care, and treatment of human illnesses to which persons may be admitted for overnight stay, and includes any institution classified under regulations issued by the State Department of Health Services as a general or specialized hospital, as a maternity hospital, or as a tuberculosis hospital, but does not include a sanitarium, rest home, a nursing or convalescent home, a maternity home, or an institution for treating alcoholics.

SEC. 21. Section 4029 of the Business and Professions Code is amended to read:

4029. (a) "Hospital pharmacy" means and includes a pharmacy, licensed by the board, located within any licensed hospital, institution, or establishment that maintains and operates organized facilities for the diagnosis, care, and treatment of human illnesses to which persons may be admitted for overnight stay and that meets all of the requirements of this chapter and the rules and regulations of the board.

(b) A hospital pharmacy also includes a pharmacy that may be located outside of the hospital, in another physical plant that is regulated under a hospital's consolidated license issued pursuant to Section 1250.8 of the Health and Safety Code. As a condition of licensure by the board, the pharmacy in another physical plant shall provide pharmaceutical services only to registered hospital patients who are on the premises of the same physical plant in which the pharmacy is located. The pharmacy services provided shall be directly related to the services or treatment plan administered in the physical plant. Nothing in this paragraph shall be construed to restrict or expand the services that a hospital pharmacy may provide.

SEC. 22. Section 4030 of the Business and Professions Code is amended to read:

4030. "Intern pharmacist" means a person registered with the board pursuant to Section 4200 who shall have completed the educational requirements as determined by the board.

SEC. 23. Section 4031 of the Business and Professions Code is amended to read:

4031. "Laboratory" means a research, teaching, or testing laboratory not engaged in the dispensing or furnishing of drugs or devices but using dangerous drugs or dangerous devices for scientific or teaching purposes. Every laboratory shall maintain an established place of business and keep purchase records. Every laboratory shall be subject to the jurisdiction of the board.

SEC. 25. Section 4033 of the Business and Professions Code is amended to read:

4033. (a) "Manufacturer" means and includes every person who prepares, derives, produces, compounds, or repackages any drug or device except a pharmacy that manufactures on the immediate premises where the drug or device is sold to the ultimate consumer.

(b) Notwithstanding subdivision (a), "manufacturer" shall not mean a pharmacy compounding a drug for parenteral therapy, pursuant to a prescription, for delivery to another pharmacy for the purpose of delivering or administering the drug to the patient or patients named in the prescription, provided that neither the components for the drug nor the drug are compounded, fabricated, packaged, or otherwise prepared prior to receipt of the prescription.

SEC. 26. Section 4034 of the Business and Professions Code is amended to read:

4034. (a) "Medical device retailer" is an area, place, or premises, other than a pharmacy, in and from which dangerous devices are sold, fitted, or dispensed pursuant to prescription. "Medical device retailer" includes, but is not limited to, any area, place, or premises described in a license issued by the board wherein dangerous devices are stored, possessed, prepared, manufactured, or repackaged, and from which the dangerous devices are furnished, sold, or dispensed at retail.

(b) "Medical device retailer" shall not include any area in a facility licensed by the State Department of Health Services where floor supplies, ward supplies, operating room supplies, or emergency room supplies of dangerous devices are stored or possessed solely for treatment of patients registered for treatment in the facility or for treatment of patients receiving emergency care in the facility.

(c) "Medical device retailer" shall not include any area of a home health agency licensed under Chapter 8 (commencing with Section 1725) of, or a hospice licensed under Chapter 8.5 (commencing with Section 1745) of, Division 2 of the Health and Safety Code, where the supplies specified in subdivision (c) of Section 4057 are stored or possessed solely for treatment of patients by a home health agency or licensed hospice, as long as all dangerous drugs or devices are furnished to these patients only upon the prescription or order of a physician, dentist, or podiatrist.

SEC. 27. Section 4037 of the Business and Professions Code is amended to read:

4037. (a) "Pharmacy" means an area, place, or premises licensed by the board in which the profession of pharmacy is practiced and where prescriptions are compounded. "Pharmacy" includes, but is not limited to, any area, place, or premises described in a license issued by the board wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances, dangerous drugs, or dangerous devices are furnished, sold, or dispensed at retail.

(b) "Pharmacy" shall not include any area in a facility licensed by the State Department of Health Services where floor supplies, ward supplies, operating room supplies, or emergency room supplies of dangerous drugs or dangerous devices are stored or possessed solely for treatment of patients registered for treatment in the facility or for treatment of patients receiving emergency care in the facility.

SEC. 28. Section 4040 of the Business and Professions Code is amended to read:

4040. (a) "Prescription" means an oral, written, or electronic transmission order that is both of the following:

(1) Given individually for the person or persons for whom ordered that includes all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the condition for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order.

(2) Issued by a physician, dentist, optometrist, podiatrist, or veterinarian licensed in this state.

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the name and signature of the prescriber, the name or names and address of the patient or patients in a manner consistent with paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail.

(c) "Electronic transmission prescription" includes both image and data prescriptions. "Electronic image transmission prescription" means any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. "Electronic data transmission prescription" means any prescription order, other than an electronic image transmission prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969 Regular Session of the Legislature shall be construed as expanding or limiting the right that a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

SEC. 29. Section 4043 of the Business and Professions Code is amended to read:

4043. "Wholesaler" means and includes every person who acts as a wholesale merchant, broker, jobber, or agent, who sells for resale, or negotiates for distribution any drug or device included in Section 4022. Unless otherwise authorized by law, a wholesaler may not store, warehouse, or authorize the storage or warehousing of drugs with any person or at any location not licensed by the board.

SEC. 30. Section 4051 of the Business and Professions Code is amended to read:

4051. (a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter.

(b) Notwithstanding any other law, a pharmacist may authorize the initiation of a prescription and otherwise provide clinical advice or information or patient consultation from outside a pharmacy premises if all of the following conditions are met:

(1) The clinical advice or information or patient consultation is provided either to a health care professional or to a patient of or resident in a licensed acute care hospital, health care facility, home health agency, or hospice.

(2) The pharmacist has access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation and advice.

(3) Access to the information described in paragraph (2) is secure from unauthorized access and use.

SEC. 31. Section 4052 of the Business and Professions Code is amended to read:

4052. (a) Notwithstanding any other provision of law, a pharmacist may:

(1) Furnish a reasonable quantity of compounded medication to a prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, in accordance with policies, procedures, or protocols of that facility, licensed clinic, or health care service plan developed by health professionals, including physicians, pharmacists, and registered nurses, that, at a minimum shall require that the medical records of the patient be available to both the patient's prescriber and the pharmacist, and that the procedures to be performed by the pharmacist relate to a condition for which the patient has first seen a physician:

(i) Ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(iv) Adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, licensed clinic, or health care service plan. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by Section 4073.

(B) A patient's prescriber may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) The policies, procedures, or protocols referred to in this paragraph shall require that the pharmacist function as part of a multidisciplinary group that includes physicians and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.

(b) Prior to performing any procedure authorized by paragraph (4) of subdivision (a), a pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility. Prior to performing any procedure authorized by paragraph (5) of subdivision (a), a pharmacist shall have either (1) successfully completed clinical residency training or (2) demonstrated clinical experience in direct patient care delivery.

(c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 32. Section 4053 of the Business and Professions Code is amended to read:

4053. (a) Subdivision (a) of Section 4051 shall not apply to a manufacturer, wholesaler, or medical device retailer if the board shall find that sufficient, qualified supervision is employed by the manufacturer, wholesaler, or medical device retailer to adequately safeguard and protect the public health, nor shall Section 4051 apply

to any laboratory licensed under Section 351 of Title III of the Public Health Service Act (Public Law 78-410).

(b) Section 4051 shall not prohibit a veterinary food-animal drug retailer from selling or dispensing veterinary food-animal drugs for food-producing animals if the board finds that sufficient qualified supervision is employed by the veterinary food-animal drug retailer to adequately safeguard and protect the public health. Each person applying for an exemption shall meet the following requirements to obtain and maintain that exemption:

(1) The veterinary food-animal drug retailer shall be in the charge of an exempt person who has taken and passed an examination administered by the board and whose certificate of exemption is currently valid.

(2) Each premises maintained by a veterinary food-animal drug retailer shall have a license issued by the board and shall have an exempt person on the premises if veterinary food-animal drugs are furnished, sold, or dispensed.

(3) Only the exempt person shall prepare and affix the label to all veterinary food-animal drugs.

(4) The exempt person shall complete a training program to be approved by the board and qualify through examination on areas covering the essential knowledge necessary to properly read, fill, label, and dispense veterinary food-animal prescriptions.

(c) An exemptee certificate issued pursuant to this section is valid only at the location for which it is issued. The licensee and the exemptee shall each notify the board in writing within 30 days of the date on which the exemptee is no longer employed by the licensee at the location for which the exemptee certificate was issued. The licensee shall not operate without a pharmacist or an exemptee approved for that location by the board.

SEC. 33. Section 4055 of the Business and Professions Code is amended to read:

4055. Nothing in this chapter, nor any other law, shall prohibit the sale of devices to clinics that have been issued a clinic license pursuant to Article 13 (commencing with Section 4180) of this chapter, or to skilled nursing facilities or intermediate care facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of, or to home health agencies licensed pursuant to Chapter 8 (commencing with Section 1725) of, or to hospices licensed pursuant to Chapter 8.5 (commencing with Section 1745) of, Division 2 of, the Health and Safety Code, as long as the devices are furnished only upon the prescription or order of a physician, dentist, or podiatrist.

SEC. 34. Section 4056 of the Business and Professions Code is amended to read:

4056. (a) Notwithstanding any provision of this chapter, a licensed hospital that contains 100 beds or less, and that does not employ a full-time pharmacist, may purchase drugs at wholesale for administration, under the direction of a physician, to patients

registered in the hospital or to emergency cases under treatment in the hospital. The hospital shall keep records of the kind and amounts of drugs so purchased and administered, and the records shall be available for inspection by all properly authorized personnel of the board.

(b) No hospital shall be entitled to the benefits of subdivision (a) until it has obtained a license from the board. Each license shall be issued to a specific hospital and for a specific location.

(c) Each application for a license under this section shall be made on a form furnished by the board. Upon the filing of the application and payment of the fee prescribed in subdivision (a) of Section 4400, the executive officer of the board shall issue a license authorizing the hospital to which it is issued to purchase drugs at wholesale pursuant to subdivision (a). The license shall be renewed annually on or before November 1 of each year upon payment of the renewal fee prescribed in subdivision (b) of Section 4400 and shall not be transferable.

(d) The form of application for a license under this section shall contain the name and address of the applicant, the number of beds, whether the applicant is a licensed hospital, whether it does or does not employ a full-time pharmacist, the name of its chief medical officer, and the name of its administrator.

(e) The board may deny, revoke, or suspend a license issued under this section in the manner and for the grounds specified in Article 19 (commencing with Section 4300).

SEC. 35. Section 4057 of the Business and Professions Code is amended to read:

4057. (a) Except as provided in Sections 4006, 4240, and 4342, this chapter does not apply to the retail sale of nonprescription drugs that are not subject to Section 4022 and that are packaged or bottled in the manufacturer's or distributor's container and labeled in accordance with applicable federal and state drug labeling requirements.

(b) This chapter does not apply to dangerous devices, hypodermic needles and syringes, sterilized sutures, parenteral solutions of 50 cubic centimeters or over, sterile water U.S.P., sterile normal saline solution, medicinal gases, inhalation anesthetics, laboratory chemicals, ethyl chloride, fluoromethane, stains and dyes, diagnostic agents and contrast medium for X-ray examination, and medicated dressings, where the sale or furnishing is made to any of the following:

(1) A physician, dentist, podiatrist, pharmacist, medical technician, medical technologist, optometrist, or chiropractor holding a currently valid and unrevoked license and acting within the scope of his or her profession.

(2) A clinic, hospital, institution, or establishment holding a currently valid and unrevoked license or permit under Division 2 (commencing with Section 1200) of the Health and Safety Code, or Chapter 2 (commencing with Section 3300) of Division 3 of, or Part

2 (commencing with Section 6250) of Division 6 of, the Welfare and Institutions Code.

(c) This chapter shall not apply to a home health agency licensed under Chapter 8 (commencing with Section 1725) of, or a hospice licensed under Chapter 8.5 (commencing with Section 1745) of, Division 2 of, the Health and Safety Code, when it purchases, stores, furnishes, or transports the following items in compliance with applicable law and regulations:

(1) Dangerous devices described in subdivision (b) of Section 4022, as long as these dangerous devices are furnished only upon the prescription or order of a physician, dentist, or podiatrist.

(2) Hypodermic needles and syringes.

(3) Irrigation solutions of 50 cubic centimeters or greater.

(d) The board may, by regulation, add to or delete dangerous drugs or dangerous devices from the exemptions provided in subdivision (b) or (c), for good cause shown.

(e) This chapter does not apply to the storage of devices in secure central or ward supply areas of a clinic, hospital, institution, or establishment holding a currently valid and unrevoked license or permit pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or pursuant to Chapter 2 (commencing with Section 3300) of Division 3 of, or Part 2 (commencing with Section 6250) of Division 6 of, the Welfare and Institutions Code.

(f) This chapter does not apply to the retail sale of vitamins, mineral products, or combinations thereof or to foods, supplements, or nutrients used to fortify the diet of humans or other animals or poultry and labeled as such that are not subject to Section 4022 and that are packaged or bottled in the manufacturer's or distributor's container and labeled in accordance with applicable federal and state labeling requirements.

(g) This chapter does not apply to the furnishing of dangerous drugs and dangerous devices to recognized schools of nursing. These dangerous drugs and dangerous devices shall not include controlled substances. The dangerous drugs and dangerous devices shall be used for training purposes only, and not for the cure, mitigation, or treatment of disease in humans. Recognized schools of nursing for purposes of this subdivision are those schools recognized as training facilities by the California Board of Registered Nursing.

SEC. 36. Section 4058 of the Business and Professions Code is amended to read:

4058. Every person holding a license issued under this chapter to operate a premises shall display the original license and current renewal license upon the licensed premises in a place where it may be clearly read by the public.

SEC. 37. Section 4059.5 is added to the Business and Professions Code, to read:

4059.5. (a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an

entity licensed by the board and must be delivered to the licensed premises and signed for and received by the pharmacist-in-charge or, in his or her absence, another pharmacist designated by the pharmacist-in-charge. Where a licensee is permitted to operate through an exemptee, the exemptee may sign for and receive the delivery.

(b) A dangerous drug or dangerous device transferred, sold, or delivered to any person within this state shall be transferred, sold, or delivered only to an entity licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's agent.

(c) Notwithstanding subdivisions (a) and (b), deliveries to a hospital pharmacy may be made to a central receiving location within the hospital. However, the dangerous drugs or dangerous devices shall be delivered to the licensed pharmacy premises within one working day following receipt by the hospital, and the pharmacist on duty at that time shall immediately inventory the drugs or devices.

(d) Notwithstanding any other provision of law, a dangerous drug or dangerous device may be ordered by and provided to a manufacturer, physician, dentist, podiatrist, optometrist, veterinarian, or laboratory, or a physical therapist acting within the scope of his or her license. Any person or entity receiving delivery of any dangerous drugs or devices, or a duly authorized representative of the person or entity, shall sign for the receipt of the dangerous drugs or dangerous devices.

(e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered to any person outside this state, whether foreign or domestic, unless the transferor, seller, or deliverer does so in compliance with the laws of this state and of the United States and of the state or country to which the drugs or devices are to be transferred, sold, or delivered. Compliance with the laws of this state and the United States and of the state or country to which the drugs or devices are to be delivered shall include, but not be limited to, determining that the recipient of the drugs or devices is authorized by law to receive the drugs or devices.

SEC. 40. Section 4060 of the Business and Professions Code is amended to read:

4060. No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, or veterinarian, when in stock in containers correctly labeled with the name and address of the supplier or producer.

SEC. 41. Section 4061 of the Business and Professions Code is amended to read:

4061. No manufacturer's sales representative shall distribute any dangerous drug or dangerous device as a complimentary sample

without the written request of a physician, dentist, podiatrist, or veterinarian. Each written request shall contain the names and addresses of the supplier and the requester, the name and quantity of the specific dangerous drug desired, and shall be preserved by the supplier with the records required by Section 4059.

SEC. 42. Section 4062 of the Business and Professions Code is amended to read:

4062. Notwithstanding Section 4059 or any other provision of law, a pharmacist may, in good faith, furnish a dangerous drug or dangerous device in reasonable quantities without a prescription during a federal, state, or local emergency, to further the health and safety of the public. A record containing the date, name and address of the person to whom the drug or device is furnished, and the name, strength and quantity of the drug or device furnished shall be maintained. The pharmacist shall communicate this information to the patient's attending physician as soon as possible. Notwithstanding Section 4060 or any other provision of law, a person may possess a dangerous drug or dangerous device furnished without prescription pursuant to this section.

SEC. 43. Section 4063 of the Business and Professions Code is amended to read:

4063. No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the original prescription. No prescription for any dangerous drug that is a controlled substance may be designated refillable as needed.

SEC. 44. Section 4064 of the Business and Professions Code is amended to read:

4064. (a) A prescription for a dangerous drug or dangerous device may be refilled without the prescriber's authorization if the prescriber is unavailable to authorize the refill and if, in the pharmacist's professional judgment, failure to refill the prescription might interrupt the patient's ongoing care and have a significant adverse effect on the patient's well-being.

(b) The pharmacist shall inform the patient that the prescription was refilled pursuant to this section.

(c) The pharmacist shall inform the prescriber within a reasonable period of time of any refills dispensed pursuant to this section.

(d) Prior to refilling a prescription pursuant to this section, the pharmacist shall make every reasonable effort to contact the prescriber. The pharmacist shall make an appropriate record, including the basis for proceeding under this section.

(e) The prescriber shall not incur any liability as the result of a refilling of a prescription pursuant to this section.

(f) Notwithstanding Section 4060 or any other law, a person may possess a dangerous drug or dangerous device furnished without prescription pursuant to this section.

SEC. 45. Section 4070 of the Business and Professions Code is amended to read:

4070. Except as provided in Section 4019, an oral or an electronic data transmission prescription as defined in subdivision (c) of Section 4040 shall as soon as practicable be reduced to writing by the pharmacist and shall be filled by, or under the direction of, the pharmacist. The pharmacist need not reduce to writing the address, telephone number, license classification, federal registry number of the prescriber, or the address of the patient or patients if the information is readily retrievable in the pharmacy.

SEC. 46. Section 4071 of the Business and Professions Code is amended to read:

4071. Notwithstanding any other provision of law, a prescriber may authorize his or her agent on his or her behalf to orally or electronically transmit a prescription to the furnisher. The furnisher shall make a reasonable effort to determine that the person who transmits the prescription is authorized to do so and shall record the name of the authorized agent of the prescriber who transmits the order.

This section shall not apply to orders for Schedule II controlled substances.

SEC. 47. Section 4072 of the Business and Professions Code is amended to read:

4072. (a) Notwithstanding any other provision of law, a pharmacist, registered nurse, licensed vocational nurse, licensed psychiatric technician, or other healing arts licentiate, if so authorized by administrative regulation, who is employed by or serves as a consultant for a licensed skilled nursing, intermediate care, or other health care facility, may orally or electronically transmit to the furnisher a prescription lawfully ordered by a person authorized to prescribe drugs or devices pursuant to Sections 4040 and 4070. The furnisher shall take appropriate steps to determine that the person who transmits the prescription is authorized to do so and shall record the name of the person who transmits the order. This section shall not apply to orders for Schedule II controlled substances.

(b) In enacting this section, the Legislature recognizes and affirms the role of the Department of Health Services in regulating drug order processing requirements for licensed health care facilities as set forth in Title 22 of the California Code of Regulations as they may be amended from time to time.

SEC. 48. Section 4073 of the Business and Professions Code is amended to read:

4073. (a) A pharmacist filling a prescription order for a drug product prescribed by its trade or brand name may select another drug product with the same active chemical ingredients of the same strength, quantity, and dosage form, and of the same generic drug name as determined by the United States Adopted Names (USAN)

and accepted by the federal Food and Drug Administration (FDA), of those drug products having the same active chemical ingredients.

(b) In no case shall a selection be made pursuant to this section if the prescriber personally indicates, either orally or in his or her own handwriting, "Do not substitute," or words of similar meaning. Nothing in this subdivision shall prohibit a prescriber from checking a box on a prescription marked "Do not substitute"; provided that the prescriber personally initials the box or checkmark.

(c) Selection pursuant to this section is within the discretion of the pharmacist, except as provided in subdivision (b). The person who selects the drug product to be dispensed pursuant to this section shall assume the same responsibility for selecting the dispensed drug product as would be incurred in filling a prescription for a drug product prescribed by generic name. There shall be no liability on the prescriber for an act or omission by a pharmacist in selecting, preparing, or dispensing a drug product pursuant to this section. In no case shall the pharmacist select a drug product pursuant to this section unless the drug product selected costs the patient less than the prescribed drug product. Cost, as used in this subdivision, is defined to include any professional fee that may be charged by the pharmacist.

(d) This section shall apply to all prescriptions, including those presented by or on behalf of persons receiving assistance from the federal government or pursuant to the California Medical Assistance Program set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(e) When a substitution is made pursuant to this section, the use of the cost-saving drug product dispensed shall be communicated to the patient and the name of the dispensed drug product shall be indicated on the prescription label, except where the prescriber orders otherwise.

SEC. 49. Section 4074 of the Business and Professions Code is amended to read:

4074. (a) A pharmacist shall inform a patient orally or in writing of the harmful effects of a drug dispensed by prescription if the drug poses substantial risk to the person consuming the drug when taken in combination with alcohol or if the drug may impair a person's ability to drive a motor vehicle, whichever is applicable, and provided the drug is determined by the board pursuant to subdivision (b) to be a drug or drug type for which this warning shall be given.

(b) The board may by regulation require additional information or labeling.

(c) This section shall not apply to drugs furnished to patients in conjunction with treatment or emergency services provided in health facilities.

(d) A health facility shall establish and implement a written policy to ensure that each patient shall receive information regarding each medication given at the time of discharge. This information shall

include the use and storage of each medication, the precautions and relevant warnings, and the importance of compliance with directions. This information shall be given by a pharmacist or registered nurse, unless already provided by a patient's prescriber, and the written policy shall be developed in collaboration with a physician, a pharmacist, and a registered nurse. The written policy shall be approved by the medical staff. Nothing in this subdivision or any other provision of law shall be construed to require that only a pharmacist provide this consultation.

SEC. 50. Section 4076 of the Business and Professions Code is amended to read:

4076. (a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

(1) Except where the prescriber orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients may be identified by the manufacturer's trade name or the commonly used name or the principal active ingredients.

(2) The directions for the use of the drug.

(3) The name of the patient or patients.

(4) The name of the prescriber.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

(7) The strength of the drug or drugs dispensed.

(8) The quantity of the drug or drugs dispensed.

(9) The expiration date of the effectiveness of the drug dispensed.

(10) The condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

SEC. 51. Section 4077 of the Business and Professions Code is amended to read:

4077. (a) Except as provided in subdivisions (b) and (c), no person shall dispense any dangerous drug upon prescription except in a container correctly labeled with the information required by Section 4076.

(b) Physicians, dentists, podiatrists, and veterinarians may personally furnish any dangerous drug prescribed by them to the patient for whom prescribed, provided that the drug is properly

labeled to show all information required in Section 4076 except the prescription number.

(c) Devices that bear the legend "Caution: federal law restricts this device to sale by or on the order of a _____," or words of similar meaning, are exempt from the requirements of Section 4076, and Section 111480 of the Health and Safety Code, when provided to patients in skilled nursing facilities or intermediate care facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(d) The following notification shall be affixed to all quantities of dimethyl sulfoxide (DMSO) prescribed by a physician, or dispensed by a pharmacy pursuant to the order of a physician in California: "Warning: DMSO may be hazardous to your health. Follow the directions of the physician who prescribed the DMSO for you."

(e) The label of any retail package of DMSO shall include appropriate precautionary measures for proper handling and first aid treatment and a warning statement to keep the product out of reach of children.

SEC. 52. Section 4078 is added to the Business and Professions Code, to read:

4078. (a) No person shall place a false or misleading label on a prescription.

(b) No prescriber shall direct that a prescription be labeled with any information that is false or misleading.

SEC. 53. Section 4080 of the Business and Professions Code is amended to read:

4080. All stock of any dangerous drug or dangerous device or of shipments through a customs broker or carrier shall be, at all times during business hours, open to inspection by authorized officers of the law.

SEC. 54. Section 4081 of the Business and Professions Code is amended to read:

4081. (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, medical device retailer, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, veterinary food-animal drug retailer, or medical device retailer shall

be jointly responsible, with the pharmacist-in-charge or exemptee, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or exemptee shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or exemptee had no knowledge, or in which he or she did not knowingly participate.

SEC. 55. Section 4082 of the Business and Professions Code is amended to read:

4082. When called upon by an inspector, the owner or manager of any entity licensed by the board, or other store, shop, building, or premises retailing, wholesaling, or storing drugs or devices shall furnish the inspector with the names of the owner or owners, manager or managers, and employees together with a brief statement of the capacity in which these persons are employed on the premises.

SEC. 56. Section 4100 of the Business and Professions Code is amended to read:

4100. Within 30 days after changing his or her address of record with the board or after changing his or her name according to law, every pharmacist, intern pharmacist, technician, or exemptee shall notify the executive officer of the board of the change of address or change of name.

SEC. 57. Section 4101 of the Business and Professions Code is amended to read:

4101. (a) Any pharmacist who takes charge of, or acts as pharmacist-in-charge of a pharmacy or other entity licensed by the board, who terminates his or her employment at the pharmacy or other entity, shall notify the board within 30 days of the termination of employment.

(b) Any exemptee who takes charge of, or acts as manager of, a wholesaler, medical device retailer, or veterinary food-drug animal retailer, who terminates his or her employment at that entity shall notify the board within 30 days of the termination of employment.

SEC. 58. Section 4102 of the Business and Professions Code is amended to read:

4102. Notwithstanding Section 2038 or any other provision of law, a pharmacist may perform skin puncture for purposes of training and assisting patients in the performance of routine drug-therapy related patient assessment procedures to monitor medical conditions including, but not limited to, diabetes. Any pharmacist who performs the service shall not be in violation of Section 2052.

SEC. 59. Section 4103 of the Business and Professions Code is amended to read:

4103. Notwithstanding Section 2038, or any other provision of law, a pharmacist may take a person's blood pressure and may inform the person of the results, render an opinion as to whether the reading is within a high, low, or normal range, and may advise the person to

consult a physician of the person's choice. Pharmacists rendering this service shall utilize commonly accepted community standards in rendering opinions and referring patients to physicians. Enforcement of this section is vested in the Board of Pharmacy of the State of California. Any pharmacist who performs this service shall not be in violation of Section 2052.

SEC. 60. Section 4104 is added to the Business and Professions Code, to read:

4104. (a) Pharmacies shall have in place procedures for taking action to protect the public when a licensed individual employed by or with the pharmacy is known to be chemically, mentally, or physically impaired to the extent it affects his or her ability to practice the profession or occupation authorized by his or her license.

(b) Pharmacies shall have in place procedures for taking action to protect the public when a licensed individual employed by or with the pharmacy is known to have engaged in the theft or diversion or self-use of prescription drugs belonging to the pharmacy.

(c) The board may, by regulation, establish requirements for reporting to the board conduct or incidents described in subdivision (a) or (b).

SEC. 61. Section 4105 is added to the Business and Professions Code, to read:

4105. (a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer, medical device retailer, or wholesaler, the exemptee, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

(e) (1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request, grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b), and (c) be kept on the licensed premises.

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

SEC. 62. Section 4110 of the Business and Professions Code is amended to read:

4110. (a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. A license shall be required for each pharmacy owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The board may, by regulation, determine the circumstances under which a license may be transferred.

(b) The board may, at its discretion, issue a temporary permit, when the ownership of a pharmacy is transferred from one person to another, upon the conditions and for any periods of time as the board determines to be in the public interest. A temporary permit fee shall be established by the board at an amount not to exceed the annual fee for renewal of a permit to conduct a pharmacy.

SEC. 63. Section 4111 of the Business and Professions Code is amended to read:

4111. (a) Except as otherwise provided in subdivision (b) or (d), the board shall not issue or renew any license to conduct a pharmacy to any of the following:

(1) A person or persons authorized to prescribe or write a prescription, as specified in Section 4040, in the State of California.

(2) A person or persons with whom a person or persons specified in paragraph (1) shares a community or other financial interest in the permit sought.

(3) Any corporation that is controlled by, or in which 10 percent or more of the stock is owned by a person or persons prohibited from pharmacy ownership by paragraph (1) or (2).

(b) Subdivision (a) shall not preclude the issuance of a permit for an inpatient hospital pharmacy to the owner of the hospital in which it is located.

(c) The board may require any information the board deems is reasonably necessary for the enforcement of this section.

(d) Subdivision (a) shall not preclude the issuance of a new or renewal license for a pharmacy to be owned or owned and operated by a person licensed on or before August 1, 1981, under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and qualified on or before August 1, 1981, under subsection (d) of Section 1310 of Title XIII of the federal Public Health Service Act, as amended, whose ownership includes persons defined pursuant to paragraphs (1) and (2) of subdivision (a).

SEC. 64. Section 4112 of the Business and Professions Code is amended to read:

4112. (a) Any pharmacy located outside this state that ships, mails, or delivers, in any manner, controlled substances, dangerous

drugs, or dangerous devices into this state shall be considered a nonresident pharmacy.

(b) All nonresident pharmacies shall register with the board.

(c) A nonresident pharmacy shall disclose to the board the location, names, and titles of (1) its agent for service of process in this state, (2) all principal corporate officers, if any, (3) all general partners, if any, and (4) all pharmacists who are dispensing controlled substances, dangerous drugs, or dangerous devices to residents of this state. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, partner, or pharmacist.

(d) All nonresident pharmacies shall comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(e) All nonresident pharmacies shall maintain records of controlled substances, dangerous drugs, or dangerous devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

(f) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(g) The board shall adopt regulations that apply the same requirements or standards for oral consultation to a nonresident pharmacy that operates pursuant to this section and ships, mails, or delivers any controlled substances, dangerous drugs, or dangerous devices to residents of this state, as are applied to an in-state pharmacy that operates pursuant to Section 4037 when the pharmacy ships, mails, or delivers any controlled substances, dangerous drugs, or dangerous devices to residents of this state. The board shall not adopt any regulations that require face-to-face consultation for a prescription that is shipped, mailed, or delivered to the patient. The regulations adopted pursuant to this subdivision shall not result in any unnecessary delay in patients receiving their medication.

(h) The registration fee shall be the fee specified in subdivision (a) of Section 4400.

(i) The registration requirements of this section shall apply only to a nonresident pharmacy that ships, mails, or delivers controlled substances, dangerous drugs, and dangerous devices into this state pursuant to a prescription.

(j) Nothing in this section shall be construed to authorize the dispensing of contact lens by nonresident pharmacists except as provided by Section 4124.

SEC. 65. Section 4113 of the Business and Professions Code is amended to read:

4113. (a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date he or she was designated.

(b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

(c) Every pharmacy shall notify the board within 30 days of the date when a pharmacist ceases to be a pharmacist-in-charge.

SEC. 66. Section 4114 of the Business and Professions Code is amended to read:

4114. An intern pharmacist may perform any activities pertaining to the practice of pharmacy as the board may determine by regulation. Whenever in this chapter the performance of an act is restricted to a pharmacist, the act may be performed by an intern pharmacist under the supervision of a pharmacist. The pharmacist shall not supervise more than one intern pharmacist at any one time.

SEC. 67. Section 4115 of the Business and Professions Code, as amended by Section 5 of Chapter 890 of the Statutes of 1996, is amended to read:

4115. (a) Notwithstanding any other provision of law, a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.

(b) This section does not authorize the performance of any tasks specified in subdivision (a) by a pharmacy technician without a pharmacist on duty, nor does this section authorize the use of a pharmacy technician to perform tasks specified in subdivision (a) except under the direct supervision and control of a pharmacist.

(c) This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.

(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a pharmacy technician may perform under the direct supervision and control of a pharmacist. Any pharmacy that employs a pharmacy technician to perform tasks specified in subdivision (a) shall do so in conformity with the regulations adopted by the board pursuant to this subdivision.

(e) (1) No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician as set forth in Section 4202.

(2) The registration requirements in paragraph (1) and Section 4202 shall not apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital until July 1, 1997.

(3) The registration requirements in paragraph (1) and Section 4202 shall not apply during the first year of employment for a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, or for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(f) The performance of duties by a pharmacy technician shall be under the direct supervision and control of a pharmacist. The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician. A pharmacy technician may perform the duties, as specified in subdivision (a), only under the immediate, personal supervision and control of a pharmacist. Any pharmacist responsible for a pharmacy technician shall be on the premises at all times, and the pharmacy technician shall be within the pharmacist's view. A pharmacist shall indicate verification of the prescription by initialing the prescription label before the medication is provided to the patient.

This subdivision shall not apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility. Notwithstanding the exemption in this subdivision, the requirements of subdivisions (a) and (b) shall apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility.

(g) (1) The ratio of pharmacy technicians performing the tasks specified in subdivision (a) to pharmacists shall not exceed one to one, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117. This ratio is applicable to all practice settings, except for an inpatient of a licensed health facility, a patient of a licensed home health agency, as specified in paragraph (2), an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, and for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(2) The board may adopt regulations establishing the ratio of pharmacy technicians performing the tasks specified in subdivision

(a) to pharmacists applicable to the filling of prescriptions of an inpatient of a licensed health facility and for a patient of a licensed home health agency. Any ratio established by the board pursuant to this subdivision shall allow, at a minimum, at least one pharmacy technician for each pharmacist, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117.

SEC. 68. Section 4116 of the Business and Professions Code is amended to read:

4116. (a) No person other than a pharmacist, an intern pharmacist, an authorized officer of the law, or a person authorized to prescribe shall be permitted in that area, place, or premises described in the license issued by the board wherein controlled substances or dangerous drugs or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged. However, a pharmacist shall be responsible for any individual who enters the pharmacy for the purposes of receiving consultation from the pharmacist or performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the pharmacy if the pharmacist remains present in the pharmacy during all times as the authorized individual is present.

(b) The board may, by regulation, establish reasonable security measures consistent with this section in order to prevent unauthorized persons from gaining access to the area, place or premises or to the controlled substances or dangerous drugs or dangerous devices therein.

SEC. 69. Section 4117 of the Business and Professions Code is amended to read:

4117. No person other than a pharmacist, an intern pharmacist, a pharmacy technician, an authorized officer of the law, a person authorized to prescribe, a registered nurse, a licensed vocational nurse, a person who enters the pharmacy for purposes of receiving consultation from a pharmacist, or a person authorized by the pharmacist in charge to perform clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the pharmacy shall be permitted in that area, place, or premises described in the license issued by the board to a licensed hospital wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged.

SEC. 70. Section 4118 of the Business and Professions Code is amended to read:

4118. (a) When, in the opinion of the board, a high standard of patient safety, consistent with good patient care, can be provided by the licensure of a pharmacy that does not meet all of the requirements for licensure as a pharmacy, the board may waive any licensing requirements.

(b) When, in the opinion of the board, a high standard of patient safety, consistent with good patient care, can be provided by the licensure of a hospital pharmacy, as defined by subdivision (a) of Section 4029, that does not meet all of the requirements for licensure as a hospital pharmacy, the board may waive any licensing requirements. However, when a waiver of any requirements is granted by the board, the pharmaceutical services to be rendered by this pharmacy shall be limited to patients registered for treatment in the hospital, whether or not they are actually staying in the hospital, or to emergency cases under treatment in the hospital.

SEC. 71. Section 4119 of the Business and Professions Code is amended to read:

4119. Notwithstanding any other provision of law, a pharmacy may furnish a dangerous drug or dangerous device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of Health Services set forth in Title 22 of the California Code of Regulations and the requirements set forth in Section 1261.5 of the Health and Safety Code. These emergency supplies shall be approved by the facility's patient care policy committee or pharmaceutical service committee and shall be readily available to each nursing station. Section 1261.5 of the Health and Safety Code limits the number of oral dosage form or suppository form drugs in these emergency supplies to 24.

SEC. 72. Section 4119.5 is added to the Business and Professions Code, to read:

4119.5. (a) A pharmacy can transfer a reasonable supply of dangerous drugs to another pharmacy.

(b) A pharmacy may repackage and furnish to a prescriber a reasonable quantity of dangerous drugs and dangerous devices for prescriber office use.

SEC. 73. Section 4120 of the Business and Professions Code is amended to read:

4120. (a) A nonresident pharmacy shall not sell or distribute dangerous drugs or dangerous devices in this state through any person or media other than a wholesaler who has obtained a license pursuant to this chapter or through a selling or distribution outlet that is licensed as a wholesaler pursuant to this chapter without registering as a nonresident pharmacy.

(b) Applications for a nonresident pharmacy registration shall be made on a form furnished by the board. The board may require any information as the board deems reasonably necessary to carry out the purposes of this section.

(c) The Legislature, by enacting this section, does not intend a license issued to any nonresident pharmacy pursuant to this section to change or affect the tax liability imposed by Chapter 3

(commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any nonresident pharmacy.

(d) The Legislature, by enacting this section, does not intend a license issued to any nonresident pharmacy pursuant to this section to serve as any evidence that the nonresident pharmacy is doing business within this state.

SEC. 74. Section 4122 of the Business and Professions Code is amended to read:

4122. (a) In every pharmacy there shall be prominently posted in a place conspicuous to and readable by prescription drug consumers a notice provided by the board concerning the availability of prescription price information, the possibility of generic drug product selection, and the type of services provided by pharmacies. The format and wording of the notice shall be adopted by the board by regulation. A written receipt that contains the required information on the notice may be provided to consumers as an alternative to posting the notice in the pharmacy.

(b) A pharmacist, or a pharmacist's employee, shall give the current retail price for any drug sold at the pharmacy upon request from a consumer, however that request is communicated to the pharmacist or employee.

(c) If a requester requests price information on more than five prescription drugs and does not have valid prescriptions for all of the drugs for which price information is requested, a pharmacist may require the requester to meet any or all of the following requirements:

(1) The request shall be in writing.

(2) The pharmacist shall respond to the written request within a reasonable period of time. A reasonable period of time is deemed to be 10 days, or the time period stated in the written request, whichever is later.

(3) A pharmacy may charge a reasonable fee for each price quotation, as long as the requester is informed that there will be a fee charged.

(4) No pharmacy shall be required to respond to more than three requests as described in this subdivision from any one person or entity in a six-month period.

(d) This section shall not apply to a pharmacy that is located in a licensed hospital and that is accessible only to hospital medical staff and personnel.

(e) Notwithstanding any other provision of this section, no pharmacy shall be required to do any of the following:

(1) Provide the price of any controlled substance in response to a telephone request.

(2) Respond to a request from a competitor.

(3) Respond to a request from an out-of-state requester.

SEC. 76. Section 4130 of the Business and Professions Code is amended to read:

4130. (a) No person shall conduct a medical device retailer in the State of California unless he or she has obtained a license from the board. A license shall be required for each medical device retailer owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a medical device retailer in more than one location. The license shall be renewed annually and shall not be transferable.

(b) A warehouse owned by a medical device retailer, the primary purpose of which is storage, not dispensing of dangerous devices to patients, shall be licensed at a fee one-half of that for a medical device retailer. There shall be no separate or additional license fee for warehouse premises owned by a medical device retailer that are physically connected to the retail premises or that share common access.

(c) The board may, at its discretion, issue a temporary license, when the ownership of a medical device retailer is transferred from one person to another, upon any conditions and for the periods of time as the board determines to be in the public interest. A temporary license fee shall be established by the board at an amount not to exceed the annual fee for renewal of a license to conduct a medical device retailer.

(d) Notwithstanding any other provision of law, a medical device retailer may furnish a prescription device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of Health Services set forth in Title 22 of the California Code of Regulations.

SEC. 77. Section 4131 of the Business and Professions Code is amended to read:

4131. (a) The following minimum standards shall apply to all medical device retailers licensed by the board:

(1) Each retailer shall store dangerous devices in a secure, lockable area.

(2) Each retailer shall maintain the premises, fixtures, and equipment in a clean and orderly condition. The premises shall be dry, well-ventilated, and have adequate lighting.

(b) The board may, by regulation, impose any other minimum standards pertaining to acquisition, storage, and maintenance of dangerous devices or other goods, or to maintenance, or condition of the licensed premises of any medical device retailer as the board determines are reasonably necessary.

SEC. 78. Section 4132 of the Business and Professions Code is amended to read:

4132. (a) Each medical device retailer shall have written policies and procedures related to medical device retailer handling and dispensing of dangerous devices. Those written policies and procedures shall include, but not be limited to:

(1) Training of staff, patients, and caregivers.

(2) Cleaning, storage, and maintenance of dangerous devices and equipment.

(3) Emergency services.

(4) Recordkeeping requirements.

(5) Storage and security requirements.

(6) Quality assurance.

(b) The medical device retailer shall make consultation available to the patient or primary caregiver about proper use of dangerous devices and related supplies furnished by the medical device retailer. The medical device retailer shall notify the patient or primary care giver that consultation is available.

(c) Each retailer shall ensure all personnel of the medical device retailer who engage in the taking of orders for, the selling of, or the fitting of dangerous devices shall have training and demonstrate initial and continuing competence in the order-taking, fitting, and sale of dangerous devices that the medical device retailer furnishes. The pharmacist-in-charge or exemptee shall be jointly responsible with the owner or owners of the medical device retailer for compliance with the requirement.

(d) Each retailer shall prepare and maintain records of training and demonstrated competence for each individual employed or retained by the retailer. The records shall be maintained for three years from and after the last date of employment.

(e) Each retailer shall have an ongoing, documented quality assurance program that includes, but is not limited to, the following:

(1) Monitoring personnel performance.

(2) Storage, maintenance, and dispensing of dangerous devices.

(f) The records and documents specified in subdivisions (a) and (e) shall be maintained for three years from the date of making. The records and documents in subdivisions (a), (d), and (e), shall be, at all times during business hours, open to inspection by authorized officers of the law.

SEC. 79. Section 4133 of the Business and Professions Code is amended to read:

4133. Section 4051 shall not prohibit a medical device retailer from selling or dispensing dangerous devices if the board finds that sufficient qualified supervision is employed by the medical device retailer to adequately safeguard and protect the public health. Each person applying for an exemption shall meet the following requirements to obtain and maintain that exemption:

(a) The medical device retailer shall be in charge of a pharmacist or an exempt person who has taken and passed an examination administered by the board and whose certificate of exemption is currently valid.

(b) The pharmacist or exempt person shall be on the premises at all times dangerous devices are available for sale or fitting unless dangerous devices are stored separately from other merchandise and are under the exclusive control of the pharmacist or exemptee. A

pharmacist or an exemptee need not be present in the warehouse facility of a medical device retailer unless the board establishes that requirement by regulation based upon the need to protect the public.

(c) The board may require an exempt person to complete a designated number of hours of coursework in board-approved courses of home health education as a condition in connection with any disciplinary action taken against the exempt person.

(d) Each premises maintained by a medical device retailer shall have a license issued by the board and shall have a pharmacist or exempt person on the premises if dangerous devices are furnished, sold, or dispensed.

(e) A medical device retailer may establish locked storage (a lock box or locked area) for emergency or after working hours furnishing of dangerous devices. Locked storage may be installed or placed in a service vehicle of the medical device retailer for emergency or after hours service to patients having prescriptions for dangerous devices.

(f) The board may, by regulation, authorize a pharmacist or exempt person to direct an employee of the medical device retailer who operates the service vehicle equipped with locked storage described in subdivision (e) to deliver a dangerous device from the locked storage to patients having prescriptions for dangerous devices. These regulations shall establish inventory requirements for the locked storage by a pharmacist or exempt person to take place shortly after a dangerous device has been delivered from the locked storage to a patient.

SEC. 80. Section 4136 of the Business and Professions Code is repealed.

SEC. 81. Section 4136 is added to the Business and Professions Code, to read:

4136. (a) A nonresident medical device retailer shall not sell or distribute dangerous devices in this state through any person or media other than a wholesaler who is licensed pursuant to this chapter without registering as a nonresident medical device retailer.

(b) Applications for a nonresident medical device retailer registration shall be made on a form furnished by the board. The board may require any information it deems reasonably necessary to carry out the purposes of this section.

(c) The Legislature, by enacting this section, does not intend a license issued to any nonresident medical device retailer pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any nonresident medical device retailer.

(d) The Legislature, by enacting this section, does not intend a registration issued to any nonresident medical device retailer pursuant to this section to serve as any evidence that the nonresident medical device retailer is doing business within this state.

SEC. 82. Section 4136.5 is added to the Business and Professions Code, to read:

4136.5. (a) No person acting as principal or agent for any out-of-state medical device retailer who has not obtained a license from the board, and who sells or distributes dangerous devices in this state that are not obtained through a wholesaler who has obtained a license pursuant to this chapter, or that are not obtained through a selling or distribution outlet of an out-of-state manufacturer that is licensed as a wholesaler pursuant to this chapter shall conduct the business of selling or distributing dangerous devices within this state without registering with the board.

(b) Registration of persons under this section shall be made on a form furnished by the board. The board may require any information as the board deems reasonably necessary to carry out the purposes of this section, including, but not limited to, the name and address of the registrant and the name and address of the manufacturer whose dangerous devices he or she is selling or distributing.

(c) The board may deny, revoke, or suspend the registration of persons registered under this section for any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code. The board may deny, revoke, or suspend the person's registration if the manufacturer, whose dangerous devices he or she is selling or distributing violates this chapter or Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code.

(d) Registration under this section shall be renewed annually.

SEC. 83. Section 4137 of the Business and Professions Code is amended to read:

4137. When, in the opinion of the board, a high standard of patient safety, consistent with good patient care, can be provided by the licensure of a medical device retailer that does not meet all of the requirements for licensure as a medical device retailer, the board may waive any licensing requirements.

SEC. 84. Section 4138 of the Business and Professions Code is amended to read:

4138. Nothing in this chapter shall be construed to prohibit the storage of dangerous devices as defined in Section 4023 in secure central or ward supply areas of a clinic, hospital, institution, or establishment holding a currently valid and unrevoked license or permit.

SEC. 85. Section 4143 of the Business and Professions Code is amended to read:

4143. This article shall not apply to the sale of hypodermic syringes and needles at wholesale by pharmacies, drug wholesalers, drug manufacturers or manufacturers and dealers in surgical instruments to pharmacies, physicians, dentists, podiatrists, veterinarians, or persons to whom a license has been issued under this article.

SEC. 86. Section 4144 of the Business and Professions Code is amended to read:

4144. A person may sell or obtain hypodermic needles and hypodermic syringes without a prescription or permit, for uses that the board determines are industrial, and that person shall not be required to comply with Section 4145 or 4146.

SEC. 87. Section 4150 of the Business and Professions Code is amended to read:

4150. (a) A pharmacy corporation means a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are pharmacists are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

(b) With respect to a pharmacy corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Pharmacy of the State of California.

SEC. 88. Section 4160 of the Business and Professions Code is amended to read:

4160. (a) No person shall act as a wholesaler of any dangerous drug or dangerous device unless he or she has obtained a license from the board. Upon approval by the board and the payment of the required fee, the board shall issue a license to the applicant.

(b) No selling or distribution outlet, located in this state, of any out-of-state manufacturer, that has not obtained a license from the board, that sells or distributes only the dangerous drugs or the dangerous devices of that manufacturer, shall sell or distribute any dangerous drug or dangerous device in this state without obtaining a wholesaler's license from the board.

(c) A separate license shall be required for each place of business owned or operated by a wholesaler. Each license shall be renewed annually and shall not be transferable.

SEC. 89. Section 4161 of the Business and Professions Code is amended to read:

4161. (a) No out-of-state manufacturer or wholesaler of dangerous drugs or dangerous devices doing business in this state who has not obtained a license from the board and who sells or distributes dangerous drugs or dangerous devices in this state through any person or media other than a wholesaler who has obtained a license pursuant to this chapter or through a selling or distribution outlet that is licensed as a wholesaler pursuant to this chapter, shall conduct the business of selling or distributing dangerous drugs or dangerous devices in this state without obtaining an out-of-state drug or dangerous device distributor's license from the board.

(b) Applications for an out-of-state dangerous drug or dangerous device distributor's license shall be made on a form furnished by the board. The board may require any information as the board deems is reasonably necessary to carry out the purposes of the section. The license shall be renewed annually.

(c) The Legislature, by enacting this section, does not intend a license issued to any out-of-state manufacturer or wholesaler pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any out-of-state manufacturer or wholesaler.

(d) The Legislature, by enacting this section, does not intend a license issued to any out-of-state manufacturer or wholesaler pursuant to this section to serve as any evidence that the out-of-state manufacturer or wholesaler is doing business within this state.

SEC. 90. Section 4162 of the Business and Professions Code is amended to read:

4162. (a) No person acting as principal or agent for any out-of-state manufacturer, wholesaler, or pharmacy who has not obtained a license from the board, and who sells or distributes dangerous drugs or dangerous devices in this state that are not obtained through a wholesaler who has obtained a license, pursuant to this chapter, or that are not obtained through a selling or distribution outlet of an out-of-state manufacturer that is licensed as a wholesaler, pursuant to this chapter, shall conduct the business of selling or distributing dangerous drugs or dangerous devices within this state without registering with the board.

(b) Registration of persons under this section shall be made on a form furnished by the board. The board may require any information as the board deems reasonably necessary to carry out the purposes of this section, including, but not limited to, the name and address of the registrant and the name and address of the manufacturer whose dangerous drugs or dangerous devices he or she is selling or distributing.

(c) The board may deny, revoke, or suspend the person's registration for any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code. The board may deny, revoke, or suspend the person's registration if the manufacturer, whose dangerous drugs or dangerous devices he or she is selling or distributing, violates any provision of this chapter or any provision of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code. The registration shall be renewed annually.

SEC. 91. Section 4163 of the Business and Professions Code is amended to read:

4163. No manufacturer or wholesaler shall furnish any dangerous drugs or dangerous devices to any unauthorized persons.

SEC. 92. Section 4164 of the Business and Professions Code is amended to read:

4164. All wholesalers licensed by the board and all manufacturers who distribute controlled substances, dangerous drugs, or dangerous devices within or into this state shall report to the board all sales of dangerous drugs and controlled substances that are subject to abuse, as determined by the board.

SEC. 93. Section 4165 is added to the Business and Professions Code, to read:

4165. (a) Any manufacturer who sells or transfers any dangerous drug or dangerous device into this state or who receives, by sale or otherwise, any dangerous drug or dangerous device from any person in this state shall, on request, furnish an authorized officer of the law with all records or other documentation of that sale or transfer.

(b) Any manufacturer who fails within a reasonable time, or refuses, to comply with subdivision (a), shall be subject to citation and a fine, an order of abatement, or both, pursuant to Section 125.9 and any regulations adopted by the board, in addition to any other remedy provided by law.

SEC. 94. Section 4166 is added to the Business and Professions Code, to read:

4166. (a) Any wholesaler or other distributor that uses the services of any carrier, including, but not limited to, the United States Postal Service or any common carrier, shall be liable for the security and integrity of any dangerous drugs or dangerous devices through that carrier until the drugs or devices are delivered to the transferee at its board-licensed premises.

(b) Nothing in this section is intended to affect the liability of a wholesaler or other distributor for dangerous drugs or dangerous devices after their delivery to the transferee.

SEC. 95. Section 4167 is added to the Business and Professions Code, to read:

4167. A wholesaler shall not obtain, by purchase or otherwise, any dangerous drugs or dangerous devices that it cannot maintain, in a secure manner, on the premises licensed by the board.

SEC. 96. Section 4170 of the Business and Professions Code is amended to read:

4170. (a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:

(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own patient and the drugs or dangerous devices are not furnished by a nurse or attendant.

(2) The dangerous drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.

(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.

(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of childproof containers.

(5) The prescriber does not use a dispensing device unless he or she personally owns the device and the contents of the device, and personally dispenses the dangerous drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(6) The prescriber, prior to dispensing, offers to give a written prescription to the patient that the patient may elect to have filled by the prescriber or by any pharmacy.

(7) The prescriber provides the patient with written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.

(b) The Medical Board of California, the State Board of Optometry, the Board of Dental Examiners of California, and the Osteopathic Medical Board of California shall have authority with the California State Board of Pharmacy to ensure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

(c) "Prescriber," as used in this section, means a person, who holds a physician's and surgeon's certificate, a license to practice optometry, a license to practice dentistry, or a certificate to practice podiatry, and who is duly registered as such by the Medical Board of California, the State Board of Optometry, the Board of Dental Examiners of California, or the Board of Osteopathic Examiners of this state.

SEC. 97. Section 4174 of the Business and Professions Code is amended to read:

4174. Notwithstanding any other provision of law, a pharmacist may dispense drugs or devices upon the order of a nurse practitioner functioning pursuant to Section 2836.1 or a certified nurse midwife functioning pursuant to Section 2746.51, a transmittal order of a physician assistant functioning pursuant to Section 3502.1, or the order of a pharmacist acting under Section 4052.

SEC. 98. Section 4175 of the Business and Professions Code is amended to read:

4175. (a) The California State Board of Pharmacy shall promptly forward to the Medical Board of California, the Board of Dental Examiners of California, the State Board of Optometry, or the Osteopathic Medical Board of California all complaints received

related to dangerous drugs or dangerous devices dispensed by a prescriber pursuant to Section 4170.

(b) All complaints involving serious bodily injury due to dangerous drugs or dangerous devices dispensed by prescribers pursuant to Section 4170 shall be handled by the Medical Board of California, the Board of Dental Examiners of California, the State Board of Optometry, or the Osteopathic Medical Board of California as a case of greatest potential harm to a patient.

SEC. 99. Section 4180 of the Business and Professions Code is amended to read:

4180. (a) (1) Notwithstanding any provision of this chapter, any of the following clinics may purchase drugs at wholesale for administration or dispensing, under the direction of a physician, to patients registered for care at the clinic:

(A) A licensed nonprofit community clinic or free clinic as defined in paragraphs (1) and (2) of subdivision (a) of Section 1204 of the Health and Safety Code.

(B) A primary care clinic owned or operated by a county as referred to in subdivision (b) of Section 1206 of the Health and Safety Code.

(C) A clinic operated by a federally recognized Indian tribe or tribal organization as referred to in subdivision (c) of Section 1206 of the Health and Safety Code.

(D) A clinic operated by a primary care community or free clinic, operated on separate premises from a licensed clinic, and that is open no more than 20 hours per week as referred to in subdivision (h) of Section 1206 of the Health and Safety Code.

(E) A student health center clinic operated by a public institution of higher education as referred to in subdivision (j) of Section 1206 of the Health and Safety Code.

(F) A nonprofit multispecialty clinic as referred to in subdivision (*l*) of Section 1206 of the Health and Safety Code.

(2) The clinic shall keep records of the kind and amounts of drugs purchased, administered, and dispensed, and the records shall be available and maintained for a minimum of seven years for inspection by all properly authorized personnel.

(b) No clinic shall be entitled to the benefits of this section until it has obtained a license from the board. Each license shall be issued to a specific clinic and for a specific location.

SEC. 100. Section 4182 of the Business and Professions Code is amended to read:

4182. (a) Each clinic that makes an application for a license under Section 4180 shall show evidence that the professional director is responsible for the safe, orderly, and lawful provision of pharmacy services. In carrying out the professional director's responsibilities, a consulting pharmacist shall be retained to approve the policies and procedures in conjunction with the professional director and the administrator. In addition, the consulting pharmacist shall be

required to visit the clinic regularly and at least quarterly. However, nothing in this section shall prohibit the consulting pharmacist from visiting more than quarterly to review the application of policies and procedures based on the agreement of all the parties approving the policies and procedures.

(b) The consulting pharmacist shall certify in writing at least twice a year that the clinic is, or is not, operating in compliance with the requirements of this article, and the most recent of those written certifications shall be submitted with the annual application for the renewal of a clinic license.

(c) For the purposes of this article, "professional director" means a physician acting in his or her capacity as medical director.

SEC. 101. Section 4186 of the Business and Professions Code is repealed.

SEC. 102. Section 4191 of the Business and Professions Code is amended to read:

4191. (a) Prior to the issuance of a clinic license authorized under this article the clinic shall comply with all applicable laws and regulations of the State Department of Health Services and the board relating to drug distribution to insure that inventories, security procedures, training, protocol development, recordkeeping, packaging, labeling, dispensing, and patient consultation are carried out in a manner that is consistent with the promotion and protection of the health and safety of the public. These policies and procedures shall include a written description of the method used to develop, approve, and revise those policies and procedures.

(b) The dispensing of drugs in a clinic that has received a license under this article shall be performed only by a physician, a pharmacist, or other person lawfully authorized to dispense drugs, and only in compliance with all applicable laws and regulations.

SEC. 104. Section 4197 of the Business and Professions Code is amended to read:

4197. (a) The following minimum standards shall apply to all veterinary food-animal drug retailers licensed by the board:

(1) Each retailer shall store veterinary food-animal drugs in a secure, lockable area.

(2) Each retailer shall maintain on the premises fixtures and equipment in a clean and orderly condition. The premises shall be dry, well-ventilated, and have adequate lighting.

(b) The board may, by regulation, impose any other minimum standards pertaining to the acquisition, storage, and maintenance of veterinary food-animal drugs, or other goods, or to the maintenance or condition of the licensed premises of any veterinary food-animal drug retailer as the board determines are reasonably necessary.

(c) When, in the opinion of the board, a high standard of patient safety consistent with good animal safety and care in the case of an animal patient can be provided by the licensure of a veterinary food-animal drug retailer that does not meet all of the requirements

for licensure as a veterinary food-animal drug retailer, the board may waive any licensing requirements.

SEC. 105. Section 4200 of the Business and Professions Code is amended to read:

4200. (a) The board shall license as a pharmacist, and issue a certificate to, any applicant who meets all the following requirements:

(1) Is at least 18 years of age.

(2) (A) Has graduated from a college of pharmacy or department of pharmacy of a university recognized by the board; or

(B) If the applicant graduated from a foreign pharmacy school, the applicant has received a grade satisfactory to the board on an examination designed to measure the equivalency of foreign pharmacy education with that required of domestic graduates.

(3) Has completed at least 150 semester units of collegiate study in the United States, or the equivalent thereof in a foreign country. No less than 90 of those semester units shall have been completed while in resident attendance at a school or college of pharmacy.

(4) Has earned at least a baccalaureate degree in a course of study devoted to the practice of pharmacy.

(5) Has had 1,500 hours of pharmaceutical experience in accordance with regulations adopted by the board.

(A) "Pharmaceutical experience," constitutes service and experience in a pharmacy under the personal supervision of a pharmacist, and consists of service and experience predominantly related to the selling of drugs, compounding physician's prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under state and federal statutes.

(B) To be credited to the total number of hours required by this subdivision, this experience shall have been obtained in pharmacies and under conditions set forth by rule or regulation of the board.

(6) Has passed a written and practical examination given by the board.

(b) Proof of the qualifications of any applicant for licensure as a pharmacist, shall be made to the satisfaction of the board and shall be substantiated by affidavits or other evidence as may be required by the board.

(c) Each person, upon application for licensure as a pharmacist under this chapter, shall pay to the executive officer of the board, the fees provided by this chapter, which fees shall be compensation to the board for investigation or examination of the applicant.

SEC. 105.3. Section 4200.1 is added to the Business and Professions Code, to read:

4200.1. (a) Notwithstanding Section 135, commencing July 1, 1998, an applicant who fails to pass the examination required by Section 4200 after four attempts shall not be eligible for further reexamination until the applicant has successfully completed a minimum of an additional 16 semester units of education in

pharmacy. The applicant shall complete a minimum of 16 semester units or the equivalent from pharmacy coursework as approved by the board. When the applicant applies for reexamination, he or she shall furnish proof satisfactory to the board that he or she has successfully completed all of the requirements of Section 4200.

(b) From July 1, 1998, to June 1, 2004, inclusive, the board shall collect data on the applicants who are admitted to, and take, the licensure examinations required by Section 4200. The board shall report to the Legislature after June 1, 2004, and before December 31, 2004, regarding the impact on those applicants of the four-attempt limit imposed by this section. The report shall include, but not be limited to, the following:

(1) The number of applicants taking the examination and the number who fail the examination for the fourth time.

(2) The number of applicants who, after failing the examination for the fourth time, apply to take the additional 16 semester units of pharmacy education in California, and the number of these applicants who are accepted into the pharmacy education programs.

(3) The number of applicants who, after failing the examination for the fourth time, apply to participate in any pharmacy studies program, in or out of California, and the number of these applicants accepted by those programs.

(4) To the extent possible, the school and country from which applicants graduated and the comparative pass/fail rates on the examination in relation to the school and country.

(c) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 105.5. Section 4200.5 is added to the Business and Professions Code, to read:

4200.5. (a) The board shall issue, upon application and payment of the fee established by Section 4400, and upon receipt of the applicant's wall certificate, a retired license to a pharmacist who has been licensed by the board for 20 years or longer, and who holds a license that is current and capable of being renewed pursuant to Section 4401, that is not suspended, revoked, or otherwise disciplined, or subject to pending discipline, under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active pharmacist's license is required. A pharmacist holding a retired license shall be permitted to use the titles "retired pharmacist" or "pharmacist, retired."

(c) The holder of a retired license shall not be required to renew that license.

(d) In order for the holder of a retired license issued pursuant to this section to restore his or her license to active status, he or she shall pass the examination that is required for initial licensure with the board.

SEC. 106. Section 4201 of the Business and Professions Code is amended to read:

4201. (a) Each application to conduct a pharmacy, wholesaler, medical device retailer, or veterinary food-animal drug retailer, shall be made on a form furnished by the board, and shall state the name, address, usual occupation, and professional qualifications, if any, of the applicant. If the applicant is other than a natural person, the application shall state the information as to each person beneficially interested therein.

(b) As used in this section, and subject to subdivision (c), the term "person beneficially interested" means and includes:

(1) If the applicant is a partnership or other unincorporated association, each partner or member.

(2) If the applicant is a corporation, each of its officers, directors, and stockholders, provided that no natural person shall be deemed to be beneficially interested in a nonprofit corporation.

(3) If the applicant is a limited liability company, each officer, manager, or member.

(c) In any case where the applicant is a partnership or other unincorporated association, is a limited liability company, or is a corporation, and where the number of partners, members, or stockholders, as the case may be, exceeds five, the application shall so state, and shall further state the information required by subdivision (a) as to each of the five partners, members, or stockholders who own the five largest interests in the applicant entity. Upon request by the executive officer, the applicant shall furnish the board with the information required by subdivision (a) as to partners, members, or stockholders not named in the application, or shall refer the board to an appropriate source of that information.

(d) The application shall contain a statement to the effect that the applicant has not been convicted of a felony and has not violated any of the provisions of this chapter. If the applicant cannot make this statement, the application shall contain a statement of the violation, if any, or reasons which will prevent the applicant from being able to comply with the requirements with respect to the statement.

(e) Upon the approval of the application by the board and payment of the fee required by this chapter for each pharmacy, wholesaler, medical device retailer, or veterinary food-animal drug retailer, the executive officer of the board shall issue a license to conduct a pharmacy, wholesaler, medical device retailer, or veterinary food-animal drug retailer, if all of the provisions of this chapter have been complied with.

(f) Notwithstanding any other provision of law, the pharmacy license shall authorize the holder to conduct a pharmacy. The license shall be renewed annually and shall not be transferable.

(g) Notwithstanding any other provision of law, the wholesale license shall authorize the holder to wholesale dangerous drugs and

dangerous devices. The license shall be renewed annually and shall not be transferable.

(h) Notwithstanding any other provision of law, the medical device retailer license shall authorize the holder thereof to operate as a medical device retailer and to sell and dispense dangerous devices.

(i) Notwithstanding any other provision of law, the veterinary food-animal drug retailer license shall authorize the holder thereof to conduct a veterinary food-animal drug retailer and to sell and dispense veterinary food-animal drugs as defined in Section 4042.

(j) For licenses referred to in subdivisions (f), (g), (h), and (i), any change in the proposed beneficial ownership interest shall be reported to the board within 30 days thereafter upon a form to be furnished by the board.

SEC. 107. Section 4202 of the Business and Professions Code is amended to read:

4202. (a) An applicant for registration as a pharmacy technician shall be issued a certificate of registration if he or she meets any one of the following requirements:

(1) Has obtained an Associate of Arts degree in a field of study directly related to the duties performed by a pharmacy technician.

(2) Has completed a course of training specified by the board.

(3) Is eligible to take the board's pharmacist licensure examination, but has not been licensed by the board as a pharmacist. Once licensed as a pharmacist, the pharmacy technician registration is no longer valid and the pharmacy technician certificate of registration must be returned to the board within 15 days.

(4) Has provided satisfactory proof to the board of one year's experience performing the tasks specified in subdivision (a) of Section 4115 while employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital, for an inmate of a correctional facility, or experience deemed equivalent by the board.

(b) The board shall adopt regulations pursuant to this section for the registration of pharmacy technicians and for the specification of training courses as set out in paragraph (2) of subdivision (a). Proof of the qualifications of any applicant for registration as a pharmacy technician shall be made to the satisfaction of the board and shall be substantiated by any evidence as may be required by the board.

(c) The board shall conduct a criminal background check of the applicant to determine if an applicant has committed acts that would constitute grounds for denial of registration, pursuant to this chapter or Chapter 2 (commencing with Section 480) of Division 1.5.

(d) The board may suspend or revoke any registration issued pursuant to this section on any ground specified in Section 4301.

SEC. 108. Section 4205 of the Business and Professions Code is amended to read:

4205. (a) A license issued pursuant to Section 4110, 4120, 4130, 4160, or 4161 shall be considered a license within the meaning of Section 4141.

(b) The board may, in its discretion, issue a license to any person authorizing the sale and dispensing of hypodermic syringes and needles for use for animals and poultry.

(c) The application for a license shall be made in writing on a form to be furnished by the board. The board may require any information as the board deems reasonably necessary to carry out the purposes of this article.

(d) A separate license shall be required for each of the premises of any person who sells or dispenses hypodermic syringes or needles at more than one location.

(e) A license shall be renewed annually and shall not be transferable.

(f) The board may deny, revoke, or suspend any license issued pursuant to this article for any violation of this chapter.

SEC. 109. Section 4230 of the Business and Professions Code is repealed.

SEC. 110. Section 4231 of the Business and Professions Code is amended to read:

4231. The board shall not issue any renewal certificate unless the applicant submits proof satisfactory to the board that he or she has successfully completed approved courses of continuing pharmaceutical education during the two years preceding the application for renewal. The continuing education required by this article shall consist of the number of clock hours, not to exceed 30 clock hours, designated by regulation adopted by the board. This section shall not apply to licensees during the first two years immediately following their graduation from a college of pharmacy or department of pharmacy of a university recognized by the board.

SEC. 111. Section 4232 of the Business and Professions Code is amended to read:

4232. (a) The courses shall be in the form of postgraduate studies, institutes, seminars, lectures, conferences, workshops, extension studies, correspondence courses, and other similar methods of conveying continuing professional pharmaceutical education.

(b) The subject matter shall be pertinent to the socioeconomic and legal aspects of health care, the properties and actions of drugs and dosage forms and the etiology, and characteristics and therapeutics of the disease state.

(c) The subject matter of the courses may include, but shall not be limited to, the following: pharmacology, biochemistry, physiology, pharmaceutical chemistry, pharmacy administration, pharmacy jurisprudence, public health and communicable diseases, professional practice management, anatomy, histology, and any

other subject matter as represented in curricula of accredited colleges of pharmacy.

SEC. 112. Section 4233 of the Business and Professions Code is repealed.

SEC. 113. Section 4300 of the Business and Professions Code is amended to read:

4300. (a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of type or circumstances of practice.

(4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

(7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

SEC. 114. Section 4301 of the Business and Professions Code is amended to read:

4301. The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been

procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to:

(a) Gross immorality.

(b) Incompetence.

(c) Gross negligence.

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering or offering to sell, furnish, give away, or administer any controlled substance to an addict.

(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(*l*) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the

circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(m) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

(n) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

(o) Actions or conduct that would have warranted denial of a license.

(p) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

SEC. 115. Section 4303 of the Business and Professions Code is amended to read:

4303. (a) The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4112, 4124, or 4340, for any significant or repeated failure to comply with Section 4074 or 4076, or for failure to comply with Section 11164 of the Health and Safety Code.

(b) The board may deny, revoke, or suspend a nonresident pharmacy registration for conduct that causes serious bodily or serious psychological injury to a resident of this state if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within 45 days of the referral.

SEC. 116. Section 4305 of the Business and Professions Code is amended to read:

4305. (a) Any person who has obtained a license to conduct a pharmacy, shall notify the board within 30 days of the termination of employment of any pharmacist who takes charge of, or acts as manager of the pharmacy. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(b) Any person who has obtained a license to conduct a pharmacy, who willfully fails to notify the board of the termination of

employment of any pharmacist who takes charge of, or acts as manager of the pharmacy, and who continues to permit the compounding or dispensing of prescriptions, or the furnishing of drugs or poisons, in his or her pharmacy, except by a pharmacist, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy.

(c) Any pharmacist who takes charge of, or acts as manager of a pharmacy, who terminates his or her employment at the pharmacy, shall notify the board within 30 days of termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

SEC. 117. Section 4305.5 is added to the Business and Professions Code, to read:

4305.5. (a) Any person who has obtained a license to conduct a wholesaler, medical device retailer, or veterinary food-animal drug retailer, shall notify the board within 30 days of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(b) Any person who has obtained a license to conduct a wholesaler, medical device retailer, or veterinary food-animal drug retailer, who willfully fails to notify the board of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee, and who continues to operate the licensee in the absence of a pharmacist or an exemptee approved for that location, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy.

(c) Any pharmacist or exemptee who takes charge of, or acts as manager of a wholesaler, medical device retailer, or veterinary food-animal drug retailer, who terminates his or her employment at the licensee, shall notify the board within 30 days of the termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

SEC. 118. Section 4306.5 is added to the Business and Professions Code, to read:

4306.5. Unprofessional conduct for a pharmacist may include acts or omissions that involve, in whole or in part, the exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

SEC. 119. Section 4307 of the Business and Professions Code is amended to read:

4307. (a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner of any partnership, corporation, firm, or

association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

(b) "Manager, administrator, owner, member, officer, director, associate, or partner," as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in that capacity in or for a licensee.

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall be in addition to the board's authority to proceed under Section 4339 or any other provision of law.

SEC. 120. Section 4309 of the Business and Professions Code is amended to read:

4309. (a) A person whose license has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after not less than the following minimum periods have elapsed from the effective date of the decision ordering disciplinary action:

(1) At least three years for reinstatement of a revoked license.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts required by the board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary

penalty imposed by the board and the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the board sitting with an administrative law judge, or a committee of the board sitting with an administrative law judge, or the board may assign the petition to an administrative law judge. Where the petition is heard by a committee of the board sitting with an administrative law judge or by an administrative law judge sitting alone, the decision shall be subject to review by the board pursuant to Section 11517 of the Government Code.

(d) In considering reinstatement or modification of penalty, the board, committee of the board, or the administrative law judge hearing the petition may consider factors including, but not limited to, all of the following:

(1) All the activities of the petitioner since the disciplinary action was taken.

(2) The offense for which the petitioner was disciplined.

(3) The petitioner's activities during the time the license was in good standing.

(4) The petitioner's documented rehabilitative efforts.

(5) The petitioner's general reputation for truth and professional ability.

(e) The hearing may be continued from time to time as the board, committee of the board, or the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The board, committee of the board, or administrative law judge may impose necessary terms and conditions on the licensee in reinstating the license.

(g) No petition under this section shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(h) Nothing in this section shall be deemed to amend or otherwise change the effect or application of Sections 822 and 823.

(i) The board may investigate any and all matters pertaining to the petition and documents submitted with or in connection with the application.

SEC. 121. Section 4311 of the Business and Professions Code is amended to read:

4311. (a) Any license issued by the board, or the holder thereof, shall be suspended automatically during any time that the person is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board, immediately upon receipt

of a certified copy of a record of a criminal conviction, shall determine whether the person has been automatically suspended by virtue of incarceration pursuant to a felony conviction and, if so, the duration of that suspension. The board shall notify the person so suspended of the suspension and that the person has a right to request a hearing, solely as to whether he or she is incarcerated pursuant to a felony conviction, in writing at that person's address of record with the board and at the facility in which the person is incarcerated.

(b) In addition to any suspension under subdivision (a), the board shall summarily suspend any license issued by the board where a conviction of the holder of the license meets the requirements of paragraphs (1) and (2).

(1) A felony that was either of the following:

(A) Committed in the course of a business or practice for which the board issues a license.

(B) Committed in a manner that a client, customer, or patient of the licensee was a victim.

(2) Where an element of the offense involves either of the following:

(A) The specific intent to deceive, defraud, steal, or make a false statement.

(B) The illegal sale or possession for sale of or trafficking in any controlled substance.

(3) The suspension shall continue until the time for appeal has elapse, if no appeal is taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(4) The board shall immediately send notice in writing of the suspension to the licensee, or the holder of any other board issued license, at his or her address of record and, if incarcerated at the time, at the facility in which the person is incarcerated. The notice shall include notification of that person's right to elect to have the issue of penalty heard as provided in paragraph (2) of subdivision (d), and of the right to request a hearing to contest the summary suspension. Any request for a hearing under this paragraph must be received by the board within 15 days following receipt of the notice provided for by this paragraph.

(5) The hearing shall be before an administrative law judge, a committee of the board sitting with an administrative law judge, or the board sitting with an administrative law judge, at the board's discretion, and shall be subject to review by the board, at its discretion. The hearing shall be limited to (A) whether there has been a felony conviction as stated in the board's notice, and (B) whether the conviction meets the criteria of this subdivision, except where the licensee chooses to proceed as provided by paragraph (2) of subdivision (d), or where the board has also filed and served an accusation as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and

given notice of the hearing as required by that chapter; provided that if an accusation under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is also to be heard, only an administrative law judge sitting alone or the board, sitting with an administrative law judge, may hear the case.

(c) In addition to any suspension under subdivision (a), the board shall also suspend any license issued by the board, or the holder thereof, if the board determines that the felony conviction of the holder of the license is substantially related to the qualifications, functions, or duties of the licensee.

(1) Notice of the board's determination shall be sent to the licensee, or the holder thereof, at that person's address of record with the board and, if the person is incarcerated at the time, the facility in which the person is incarcerated. The notice shall advise the person that the license shall be suspended without hearing unless, within 15 days following receipt of the notice, a written request for hearing is delivered to the board.

(2) Upon receipt of a timely request for hearing, a notice of hearing shall be sent to the person at least 10 days before the date scheduled for the hearing. The notice of hearing shall include notification of that person's right to elect to have the issue of penalty heard as provided in paragraph (2) of subdivision (d).

(3) The hearing to determine whether a felony conviction is substantially related for purposes of an interim suspension under this subdivision shall be separate from any hearing on an accusation under the Administrative Procedure Act, except where the licensee elects to proceed under paragraph (2) of subdivision (d), or where the board has filed and served an accusation as provided by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and given notice of hearing as required by that chapter. The hearing on whether the felony conviction is substantially related shall be heard either by an administrative law judge sitting alone, by a committee of the board sitting with an administrative law judge, or by the board sitting with an administrative law judge, at the board's discretion, and shall be subject to review by the board, at its discretion. However, if an accusation under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is also to be heard, only an administrative law judge sitting alone or the board, sitting with an administrative law judge, may hear the case. Except where a person proceeds under paragraph (2) of subdivision (d), or the board proceeds with an accusation at the same time, any suspension imposed under this subdivision shall continue until an accusation is filed under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and a final decision is rendered by the board.

(4) A conviction of any crime referred to in Section 4301, or for violation of Section 187, 261, or 288 of the Penal Code, shall be

conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee of the board. Upon its own motion or for good cause shown the board may decline to impose a suspension under this subdivision or may set aside a suspension previously imposed when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the practice of pharmacy and the handling of dangerous drugs and devices.

(d) (1) Discipline may be ordered in accordance with Section 4300 or an application denied when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge sitting alone or with a committee of the board or with the board itself, at the board's discretion, and any decision shall be subject to review by the board, at its discretion. The hearing shall not be held until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; provided that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in this section at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of the licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause, including the facts underlying the conviction, other than the overturned conviction.

(3) The record of the proceedings resulting in the criminal conviction, including a transcript of any testimony taken in connection with the proceeding, may be received in evidence in any administrative proceeding to the extent the testimony would otherwise be admissible under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A certified copy of the criminal conviction shall be conclusive proof of the fact of the conviction.

(e) Other provisions of this chapter setting forth procedures for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section, except as specifically provided in this section.

(f) For purposes of this section, a crime is a felony if it is specifically declared to be so or is made a felony 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. For purposes of this section, a felony also includes a conviction under federal law, or the law of any other state of the United States, of the District of Columbia, or of any territory or possession of the United States. A conviction includes a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(g) The board may delegate the authority to issue a suspension under subdivision (a) or (b) or a notice of suspension under subdivision (c) to the executive officer of the board.

SEC. 122. Section 4312 of the Business and Professions Code is amended to read:

4312. (a) The board may void the license of a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer if the licensed premises remains closed, as defined in subdivision (e), other than by order of the board. For good cause shown, the board may void a license after a shorter period of closure. To void a license pursuant to this subdivision, the board shall make a diligent, good faith effort to give notice by personal service on the licensee. If no written objection is received within 10 days after personal service is made or a diligent, good faith effort to give notice by personal service on the licensee has failed, the board may void the license without the necessity of a hearing. If the licensee files a written objection, the board shall file an accusation based on the licensee remaining closed. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted in that chapter.

(b) In the event that the license of a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer is voided pursuant to subdivision (a) or revoked pursuant to Article 9 (commencing with Section 4300), or a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer, notifies the board of its intent to remain closed or to discontinue business, the licensee shall, within 10 days thereafter, arrange for the transfer of all dangerous drugs and controlled substances or dangerous devices to another licensee authorized to possess the dangerous drugs and controlled substances or dangerous devices. The licensee transferring the dangerous drugs and controlled substances or dangerous devices shall immediately confirm in writing to the board that the transfer has taken place.

(c) If a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer fails to comply with subdivision (b), the board may seek and obtain an order from the superior court in the county in which the wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer is located,

authorizing the board to enter the wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer and inventory and store, transfer, sell, or arrange for the sale of, all dangerous drugs and controlled substances and dangerous devices found in the wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer.

(d) In the event that the board sells or arranges for the sale of any dangerous drugs, controlled substances, or dangerous devices pursuant to subdivision (c), the board may retain from the proceeds of the sale an amount equal to the cost to the board of obtaining and enforcing an order issued pursuant to subdivision (c), including the cost of disposing of the dangerous drugs, controlled substances, or dangerous devices. The remaining proceeds, if any, shall be returned to the licensee from whose premises the dangerous drugs or controlled substances or dangerous devices were removed.

(1) The licensee shall be notified of his or her right to the remaining proceeds by personal service or by certified mail, postage prepaid.

(2) Where a statute or regulation requires the licensee to file with the board his or her address, and any change of address, the notice required by this subdivision may be sent by certified mail, postage prepaid, to the latest address on file with the board and service of notice in this manner shall be deemed completed on the 10th day after the mailing.

(3) If the licensee is notified as provided in this subdivision, and the licensee fails to contact the board for the remaining proceeds within 30 calendar days after personal service has been made or service by certified mail, postage prepaid, is deemed completed, the remaining proceeds shall be deposited by the board into the Pharmacy Board Contingent Fund. These deposits shall be deemed to have been received pursuant to Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter.

(e) For the purposes of this section, "closed" means not engaged in the ordinary activity for which a license has been issued for at least one day each calendar week during any 120-day period.

(f) Nothing in this section shall be construed as requiring a pharmacy to be open seven days a week.

SEC. 123. Section 4313 is added to the Business and Professions Code, to read:

4313. In determining whether to grant an application for licensure or whether to discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence.

SEC. 124. Section 4320 of the Business and Professions Code is amended to read:

4320. (a) The penalties prescribed in this chapter may be recovered in any court having jurisdiction, by a civil action instituted by the board in the name of the State of California, or by criminal prosecution upon complaint being made.

(b) The district attorney of the county wherein violations of this chapter occur shall conduct all felony prosecutions at the request of the board. The district attorney of the county or city attorney of the city wherein violations of this chapter occur shall conduct all other actions and prosecutions at the request of the board.

SEC. 125. Section 4321 of the Business and Professions Code is amended to read:

4321. (a) Any person who knowingly violates any of the provisions of this chapter, when no other penalty is provided, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars ($200), and not more than two thousand dollars ($2,000), or by imprisonment of not less than 30 days nor exceeding six months, or by both that fine and imprisonment.

(b) In all other instances, any person who violates any of the provisions of this chapter, when no other penalty is provided, is guilty of an infraction, and upon conviction thereof may be punished by a fine not to exceed one thousand dollars ($1,000).

SEC. 126. Section 4322 of the Business and Professions Code is amended to read:

4322. Any person who attempts to secure or secures licensure for himself or herself or any other person under this chapter by making or causing to be made any false representations, or who fraudulently represents himself or herself to be registered, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding four hundred dollars ($400), or by imprisonment not exceeding 50 days, or by both that fine and imprisonment.

SEC. 127. Section 4326 of the Business and Professions Code is amended to read:

4326. (a) Any person who obtains a hypodermic needle or hypodermic syringe by a false or fraudulent representation or design or by a forged or fictitious name, or contrary to, or in violation of, any of the provisions of this chapter, is guilty of a misdemeanor.

(b) Any person who has obtained a hypodermic needle or hypodermic syringe from any person to whom a permit has been issued as provided in Article 9 (commencing with Section 4140) and who uses, or permits or causes, directly or indirectly, the hypodermic needle or hypodermic syringe to be used for any purpose other than that for which it was obtained is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or both a fine and imprisonment.

SEC. 128. Section 4331 of the Business and Professions Code is amended to read:

4331. (a) Any person who is neither a pharmacist nor an exemptee and who takes charge of a medical device retailer, wholesaler, or veterinary food-animal drug retailer or who dispenses a prescription or furnishes dangerous devices except as otherwise provided in this chapter is guilty of a misdemeanor.

(b) Any person who has obtained a license to conduct a medical device retailer and who fails to place in charge of that medical device retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the compounding or dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(c) Any person who has obtained a license to conduct a veterinary food-animal drug retailer and who fails to place in charge of that veterinary food-animal drug retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(d) Any person who has obtained a license to conduct a wholesaler and who fails to place in charge of that wholesaler a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

SEC. 129. Section 4333 of the Business and Professions Code is amended to read:

4333. (a) All prescriptions filled by a pharmacy and all other records required by Section 4081 shall be maintained on the premises and available for inspection by authorized officers of the law for a period of at least three years. In cases where the pharmacy discontinues business, these records shall be maintained in a board-licensed facility for at least three years.

(b) Any person who willfully fails to comply with subdivision (a) is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars ($200). Any person convicted of a second or subsequent offense shall be punished by a fine of not less than two hundred dollars ($200) and not more than four hundred dollars ($400).

(c) (1) Notwithstanding subdivisions (a) and (b), the board may, upon written request, grant a waiver of the requirement that the records described in subdivisions (a) and (b) be maintained on the licensed premises or, in the event the pharmacy discontinues business, that the records be maintained in a board licensed facility. A person who maintains records in compliance with that waiver is not subject to the penalties set forth in subdivision (b).

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

SEC. 130. Section 4339 of the Business and Professions Code is amended to read:

4339. (a) The board may bring an action to enjoin the violation of any provision of this chapter in any superior court in and for the county in which the violation has occurred. Any action shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the board shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss. The action shall be brought in the name of the people of the State of California.

(b) Nothing in this section shall permit the bringing of any action with respect to any drug or product not subject to Section 4022 that is packaged or bottled in the manufacturer's or distributor's container and labeled in accordance with applicable federal and state drug labeling requirements.

(c) The authority granted by this section is in addition to the authority of the board to institute any other administrative, civil, or criminal action.

SEC. 131. Section 4341 of the Business and Professions Code is amended to read:

4341. Notwithstanding any other provision of law, prescription drugs or devices may be advertised if the advertisement conforms with the requirements of Section 651.

SEC. 133. Section 4360 of the Business and Professions Code is amended to read:

4360. It is the intent of the Legislature that the board seek ways and means to identify and rehabilitate pharmacists whose competency may be impaired due to abuse of alcohol and other drugs, or due to mental illness, so that these pharmacists may be treated and returned to the practice of pharmacy in a manner that will not endanger the public health and safety. It is also the intent of the Legislature that the board shall implement this legislation by establishing a diversion program as a voluntary alternative to traditional disciplinary actions.

SEC. 134. Section 4361 of the Business and Professions Code is amended to read:

4361. As used in this article:

(a) "Diversion program" means a rehabilitation program designed and administered by a contracting Employee Assistance Program, available to the board in conjunction with, or as an alternative to, other traditional sanctions that the board may impose upon pharmacists pursuant to disciplinary actions within its jurisdiction.

(b) "Employee assistance program" means an agency or organization that provides confidential assessments and referral services for persons experiencing problems related to alcohol, drug abuse, or mental illness.

(c) "Pharmacists recovery program" or "program" means the rehabilitation program created by this article for pharmacists whose competency may be threatened or diminished due to abuse of alcohol or other drugs.

(d) "Volunteer intervenor" means a pharmacist recruited through a pharmacists' professional association who is available and trained to assist pharmacists seeking the benefits of the pharmacist's recovery program.

SEC. 135. Section 4369 of the Business and Professions Code is amended to read:

4369. (a) The board shall inform, in writing, each pharmacist referred to the employees assistance program as part of a board action of the procedures followed in the program, of the rights and responsibilities of the pharmacist in the program, and of the possible consequences of noncompliance with the program.

(b) Any failure to comply with the provisions of the treatment program may result in the termination of the pharmacist's participation in the diversion program. The name and license number of a pharmacist who is terminated for failure to comply with the provisions of the treatment program and the basis for the termination shall be reported to the board.

(c) Participation in a program under this article shall not be a defense to any disciplinary action that may be taken by the board. Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program under this article.

SEC. 136. Section 4370 of the Business and Professions Code is amended to read:

4370. (a) The employee assistance program shall inform, in writing, each pharmacist who voluntarily participates in the diversion program without referral by the board of the procedures followed in the program, of the rights and responsibilities of the pharmacist in the program, and of the possible consequences of noncompliance with the program.

(b) The board shall be informed of the pharmacist's noncompliance with the treatment program if the employee assistance program determines that the pharmacist's resuming the practice of pharmacy would pose a threat to the health and safety of the public. The board shall be informed of the basis for the pharmacist's termination and of the determination that the pharmacist's resuming the practice of pharmacy would pose a threat to the health and safety of the public.

(c) Participation in a program under this article shall not be a defense to any disciplinary action that may be taken by the board.

Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program under this article.

SEC. 137. Section 4372 of the Business and Professions Code is amended to read:

4372. All board records and records of the employee assistance program pertaining to the treatment of a pharmacist in the program shall be kept confidential and are not subject to discovery or subpoena. However, board records and records of the employee assistance program may be disclosed and testimony provided in connection with participation pursuant to Section 4369 or 4370, but only to the extent those records or testimony are relevant to the conduct for which the pharmacist was terminated from the program.

SEC. 138. Section 4400 of the Business and Professions Code is amended to read:

4400. The amount of fees and penalties prescribed by this chapter, except as otherwise provided, is that fixed by the board according to the following schedule:

(a) (1) The fee for a nongovernmental pharmacy license shall be three hundred forty dollars ($340) and may be increased to four hundred dollars ($400).

(2) The fee for a medical device retailer license shall not exceed the fee for a nongovernmental pharmacy license.

(b) The fee for a nongovernmental pharmacy or medical device retailer annual renewal shall be one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250).

(c) The fee for processing remodeling plans and inspecting a remodeled pharmacy shall be one hundred thirty dollars ($130) and may be increased to one hundred seventy-five dollars ($175).

(d) The fee for the pharmacist examination shall be one hundred fifty-five dollars ($155) and may be increased to one hundred eighty-five dollars ($185).

(e) The fee for regrading an examination shall be seventy-five dollars ($75) and may be increased to eighty-five dollars ($85). If an error in grading is found and the applicant passes the examination, the regrading fee shall be refunded.

(f) The fee for a pharmacist license and biennial renewal shall be one hundred fifteen dollars ($115) and may be increased to one hundred fifty dollars ($150).

(g) The fee for a wholesaler license and annual renewal shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(h) The fee for a hypodermic license and renewal shall be ninety dollars ($90) and may be increased to one hundred twenty-five dollars ($125).

(i) The fee for examination and investigation for an exemptee license under Sections 4053 and 4054 shall be seventy-five dollars ($75) and may be increased to one hundred dollars ($100), except for

a veterinary food-animal drug retailer exemptee, for whom the fee shall be one hundred dollars ($100).

(j) The fee for an exemptee license and annual renewal under Sections 4053 and 4054 shall be one hundred ten dollars ($110) and may be increased to one hundred fifty dollars ($150), except that the fee for the issuance of a veterinary food-animal drug retailer exemptee license shall be one hundred fifty dollars ($150), for renewal one hundred ten dollars ($110), which may be increased to one hundred fifty dollars ($150), and for filing a late renewal fifty-five dollars ($55).

(k) The fee for an out-of-state drug distributor's license and annual renewal issued pursuant to Section 4120 shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(*l*) The fee for registration and annual renewal of providers of continuing education shall be one hundred dollars ($100) and may be increased to one hundred thirty dollars ($130).

(m) The fee for evaluation of continuing education courses for accreditation shall be set by the board at an amount not to exceed forty dollars ($40) per course hour.

(n) The fee for evaluation of applications submitted by graduates of foreign colleges of pharmacy or colleges of pharmacy not recognized by the board shall be one hundred sixty-five dollars ($165) and may be increased to one hundred seventy-five dollars ($175).

(o) The fee for an intern license or extension shall be sixty-five dollars ($65) and may be increased to seventy-five dollars ($75). The fee for transfer of intern hours or verification of licensure to another state shall be fixed by the board not to exceed twenty dollars ($20).

(p) The board may, by regulation, provide for the waiver or refund of the additional fee for the issuance of a certificate where the certificate is issued less than 45 days before the next succeeding regular renewal date.

(q) The fee for the reissuance of any license, or renewal thereof, that has been lost or destroyed or reissued due to a name change is thirty dollars ($30).

(r) The fee for the reissuance of any license, or renewal thereof, that must be reissued because of a change in the information, is sixty dollars ($60) and may be increased to one hundred dollars ($100).

(s) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board Contingent Fund equal to approximately one year's operating expenditures.

(t) The fee for any applicant for a clinic permit is three hundred forty dollars ($340) and may be increased to four hundred dollars ($400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250) for each permit.

(u) The board shall charge a fee for the processing and issuance of a registration to a pharmacy technician and a separate fee for the biennial renewal of the registration. The registration fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50). The biennial renewal fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50).

(v) The fee for a veterinary food-animal drug retailer license shall be four hundred dollars ($400). The annual renewal fee for a veterinary food-animal drug retailer shall be two hundred fifty dollars ($250).

(w) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars ($30).

SEC. 139. Section 4401 of the Business and Professions Code is amended to read:

4401. Every pharmacist who desires to retain his or her license on the books of the board shall biennially pay to the executive officer of the board the renewal fee, established by the board, within the limits prescribed by this chapter. In return for the payment of the renewal fee, a certificate of renewal shall be issued.

SEC. 140. Section 4402 of the Business and Professions Code is amended to read:

4402. (a) Any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period.

(b) (1) Any pharmacist whose license is canceled pursuant to subdivision (a) may obtain a new license if he or she takes and passes the examination that is required for initial license with the board.

(2) The board may impose conditions on any license issued pursuant to this section, as it deems necessary.

(c) A license that has been revoked by the board under former Section 4411 shall be deemed canceled three years after the board's revocation action, unless the board has acted to reinstate the license in the interim.

(d) This section shall not affect the authority of the board to proceed with any accusation that has been filed prior to the expiration of the three-year period.

(e) Any other license issued by the board shall be canceled by operation of law if the license is not renewed within 60 days after its expiration. Any license canceled under this subdivision may not be reissued. Instead, a new application will be required.

SEC. 140.5. Section 19059.5 of the Business and Professions Code is amended to read:

19059.5. Every sanitizer, unless he or she holds a license as an upholstered furniture and bedding manufacturer, retail furniture and bedding dealer, retail bedding dealer, or a custom upholsterer, shall hold a sanitizer's license.

SEC. 140.7. 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) 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, these individuals shall comply with all other provisions of this chapter.

(c) 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.

(d) 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).

(e) 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. 141. Section 11122 of the Health and Safety Code is amended to read:

11122. (a) A controlled substance shall be stored only in a warehouse that is licensed by the California State Board of Pharmacy.

(b) This section shall not apply to any of the following:

(1) Any pharmacy or other person who is licensed or authorized by this state to sell or furnish the controlled substance upon the written prescription of a practitioner, as defined in subdivision (a) of Section 11026.

(2) Any practitioner, as defined in subdivision (a) of Section 11026, who possesses a controlled substance for administration to his or her patients.

(3) Any licensed laboratory in this state that is authorized to receive and use the controlled substance.

(4) Any licensed hospital in this state.

(5) Any person who obtains the controlled substance upon the prescription of a practitioner, as defined in subdivision (a) of Section 11026, for his or her personal use.

(6) Any agent or employee of any licensed manufacturer or wholesaler who possesses the controlled substance for display purposes or furnishes controlled substances as a sample at no cost to a licensed pharmacist or practitioner, as defined in subdivision (a) of Section 11026.

(7) A manufacturer licensed pursuant to Section 111615 of this code or Section 4160 or 4161 of the Business and Professions Code.

(8) A wholesaler licensed pursuant to Section 4160 or 4161 of the Business and Professions Code.

(9) Any emergency medical technician-II, emergency medical technician-paramedic, or mobile intensive care nurse, certified or authorized pursuant to Division 2.5 (commencing with Section 1797) to provide prehospital limited advanced life support or advanced life support as part of a local emergency medical services system, who, in a secure manner and according to policies and procedures established by the local emergency medical services agency as part of the local emergency medical services plan, transports, stores, or administers controlled substances acting within his or her scope of practice.

(10) Any emergency medical response or transport unit that has been approved by the local emergency medical services agency and is operating as part of the local emergency medical services system according to policies and procedures established by the local medical services agency for the emergency medical treatment and transport of patients, upon which, controlled substances authorized by the scope of practice of the prehospital personnel approved to staff the unit are stored or transported in a secure manner according to policies and procedures established by the local emergency medical services agency.

SEC. 142. Section 11150 of the Health and Safety Code is amended to read:

11150. No person other than a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within

the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or out-of-state prescriber pursuant to Section 4005 of the Business and Professions Code shall write or issue a prescription.

SEC. 143. Section 1.5 of this bill incorporates amendments to Section 4001 of the Business and Professions Code proposed by both this bill and SB 827. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, and (2) each bill amends Section 4001 of the Business and Professions Code, and (3) this bill is enacted after SB 827, in which case Section 1 of this bill shall not become operative.

SEC. 144. Section 3.5 of this bill incorporates amendments to Section 4003 of the Business and Professions Code proposed by both this bill and SB 827. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, and (2) each bill amends Section 4003 of the Business and Professions Code, and (3) this bill is enacted after SB 827, in which case Section 3 of this bill shall not become operative.

SEC. 145. Section 7.5 of this bill incorporates amendments to Section 4008 of the Business and Professions Code proposed by both this bill and SB 827. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, and (2) each bill amends Section 4008 of the Business and Professions Code, and (3) this bill is enacted after SB 827, in which case Section 7 of this bill shall not become operative.

SEC. 146. 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 550

An act to amend Sections 1241 and 2058 of the Business and Professions Code, and to add Section 1596.797 to the Health and Safety Code, relating to health.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1241 of the Business and Professions Code is amended to read:

1241. (a) This chapter applies to all clinical laboratories in California or receiving biological specimens originating in California for the purpose of performing a clinical laboratory test or examination, and to all persons performing clinical laboratory tests or examinations or engaging in clinical laboratory practice in California or on biological specimens originating in California, except as provided in subdivision (b).

(b) This chapter shall not apply to any of the following clinical laboratories, or to persons performing clinical laboratory tests or examinations in any of the following clinical laboratories:

(1) Those owned and operated by the United States of America, or any department, agency, or official thereof acting in his or her official capacity to the extent that the Secretary of the federal Department of Health and Human Services has modified the application of CLIA requirements to those laboratories.

(2) Public health laboratories, as defined in Section 1206.

(3) Those that perform clinical laboratory tests or examinations for forensic purposes only.

(4) Those that perform clinical laboratory tests or examinations for research and teaching purposes only and do not report or use patient-specific results for the diagnosis, prevention, or treatment of any disease or impairment of, or for the assessment of the health of, an individual.

(5) Those that perform clinical laboratory tests or examinations certified by the National Institutes on Drug Abuse only for those certified tests or examinations. However, all other clinical laboratory tests or examinations conducted by the laboratory are subject to this chapter.

(6) Those that register with the State Department of Health Services pursuant to subdivision (c) to perform blood glucose testing for the purposes of monitoring a minor child diagnosed with diabetes

when the person performing the test has been entrusted with the care and control of the child by the child's parent or legal guardian and provided that all of the following occur:

(A) The blood glucose monitoring test is performed with a blood glucose monitoring instrument that has been approved by the federal Food and Drug Administration for sale over the counter to the public without a prescription.

(B) The person has been provided written instructions by the child's health care provider or an agent of the child's health care provider in accordance with the manufacturer's instructions on the proper use of the monitoring instrument and the handling of any lancets, test strips, cotton balls, or other items used during the process of conducting a blood glucose test.

(C) The person, receiving written authorization from the minor's parent or legal guardian, complies with written instructions from the child's health care provider, or an agent of the child's health care provider, regarding the performance of the test and the operation of the blood glucose monitoring instrument, including how to determine if the results are within the normal or therapeutic range for the child, and any restriction on activities or diet that may be necessary.

(D) The person complies with specific written instructions from the child's health care provider or an agent of the child's health care provider regarding the identification of symptoms of hypoglycemia or hyperglycemia, and actions to be taken when results are not within the normal or therapeutic range for the child. The instructions shall also contain the telephone number of the child's health care provider and the telephone number of the child's parent or legal guardian.

(E) The person records the results of the blood glucose tests and provides them to the child's parent or legal guardian on a daily basis.

(F) The person complies with universal precautions when performing the testing and posts a list of the universal precautions in a prominent place within the proximity where the test is conducted.

(c) Any place where blood glucose testing is performed pursuant to this section shall register by notifying the State Department of Health Services in writing no later than 30 days after testing has commenced. Registrants pursuant to this subdivision shall not be required to pay any registration or renewal fees nor shall they be subject to routine inspection by the State Department of Health Services.

SEC. 2. Section 2058 of the Business and Professions Code is amended to read:

2058. (a) Nothing in this chapter prohibits service in the case of emergency, or the domestic administration of family remedies.

(b) Nothing in this chapter shall be construed to prohibit obtaining a blood specimen by skin puncture for the purpose of performing blood glucose testing for the purposes of monitoring a

minor child in accordance with paragraph (6) of subdivision (b) of Section 1241.

SEC. 3. Section 1596.797 is added to the Health and Safety Code, to read:

1596.797. (a) Blood glucose testing for the purposes of monitoring a minor child diagnosed with diabetes may be performed in a child day care facility in accordance with paragraph (6) of subdivision (b) of Section 1241 of the Business and Professions Code.

(b) Nothing in this section, or in any other provision of law, including, but not limited to, Section 1241 or 2058 of the Business and Professions Code, shall require an insulin injection to be administered to any child in a child day care facility.

CHAPTER 551

An act to amend Sections 1203.044 and 12022.6 of the Penal Code, and to repeal Section 3 of Chapter 1334 of the Statutes of 1992, relating to crimes.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1203.044 of the Penal Code is amended to read:

1203.044. (a) This section shall apply only to a defendant convicted of a felony for theft of an amount exceeding fifty thousand dollars ($50,000) in a single transaction or occurrence. This section shall not apply unless the fact that the crime involved the theft of an amount exceeding fifty thousand dollars ($50,000) in a single transaction or occurrence is charged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. Aggregate losses from more than one criminal act shall not be considered in determining if this section applies.

(b) Notwithstanding any other law, probation shall not be granted to a defendant convicted of a crime to which subdivision (a) applies if the defendant was previously convicted of an offense for which an enhancement pursuant to Section 12022.6 was found true even if that enhancement was not imposed by the sentencing court. The prior conviction shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(c) In deciding whether to grant probation to a defendant convicted of a crime to which subdivision (a) applies, the court shall consider all relevant information, including the extent to which the defendant has attempted to pay restitution to the victim between the

date upon which the defendant was convicted and the date of sentencing. A defendant claiming inability to pay restitution before the date of sentencing shall provide a statement of assets, income, and liabilities, as set forth in subdivision (j) to the court, the probation department, and the prosecution.

(d) In addition to the restrictions on probation imposed by subdivisions (b) and (c), probation shall not be granted to any person convicted of theft in an amount exceeding one hundred thousand dollars ($100,000) in a single transaction or occurrence, except in unusual cases if the interests of justice would best be served if the person is granted probation. The fact that the theft was of an amount exceeding one hundred thousand dollars ($100,000) in a single transaction or occurrence, shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. This subdivision shall not authorize a grant of probation otherwise prohibited under subdivision (b) or (c). If probation is granted pursuant to this subdivision, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition. Aggregate losses from more than one criminal act shall not be considered in determining whether this subdivision applies.

(e) Subject to subdivision (f), if a defendant is convicted of a crime to which subdivision (a) applies and the court grants probation, a court shall impose at least a 90-day sentence in a county jail as a condition of probation. If the defendant was convicted of a crime to which subdivision (d) applies, and the court grants probation, the court shall impose at least a 180-day sentence in a county jail as a condition of probation.

(f) The court shall designate a portion of any sentence imposed pursuant to subdivision (e) as a mandatory in-custody term. For the purpose of this section only, "mandatory in-custody term" means that the defendant shall serve that term, notwithstanding credits pursuant to Section 4019, in custody in the county jail. The defendant shall not be allowed release on any program during that term, including work furlough, work release, public service program, or electronic monitoring. The court shall designate the mandatory in-custody term as follows:

(1) If the defendant was convicted of a crime to which subdivision (a) applies, the mandatory in-custody term shall be no less than 30 days. If the person serves a mandatory in-custody term of at least 30 days, the court may, in the interests of justice, and for reasons stated in the record, reduce the mandatory minimum 90-day sentence required by subdivision (e).

(2) If the defendant was convicted of a crime to which subdivision (d) applies, the mandatory in-custody term shall be no less than 60 days. If the person serves a mandatory in-custody term of at least 60 days, the court may, in the interests of justice, and for reasons stated

in the record, reduce the mandatory minimum 180-day sentence required by subdivision (e).

(g) If a defendant is convicted of a crime to which subdivision (a) applies, and the court grants probation, the court shall require the defendant as a condition of probation to pay restitution to the victim and to pay a surcharge to the county in the amount of 20 percent of the restitution ordered by the court, as follows:

(1) The surcharge is not subject to any assessments otherwise imposed by Section 1464. The surcharge shall be paid into the county treasury and placed in the general fund to be used exclusively for the investigation and prosecution of white collar crime offenses and to pay the expenses incurred by the county in administering this section, including increased costs incurred as a result of offenders serving mandatory in-custody terms pursuant to this section.

(2) The court shall also enter an income deduction order as provided in Section 13967.2 of the Government Code to secure payment of the surcharge. That order may be enforced to secure payment of the surcharge as provided by those provisions.

(3) The county board of supervisors shall not charge the fee provided for by Section 1203.1, subdivision (*l*) of Section 1202.4, or subdivision (d) of Section 13967, as operative on or before September 28, 1994, of the Government Code for the collection of restitution or any restitution fine.

(4) The defendant shall not be required to pay the costs of probation as otherwise required by subdivision (b) of Section 1203.1.

(h) Notwithstanding any other law, if a defendant is convicted of a crime to which subdivision (a) applies and the court grants probation, as a condition of probation, within 30 court days after being granted probation, and annually thereafter, the defendant shall provide the county financial officer with all of the following documents and records:

(1) True and correct copies of all income tax and personal property tax returns for the previous tax year, including W-2 forms filed on the defendant's behalf with any state tax agency. If the defendant is unable to supply a copy of a state tax return, the defendant shall provide a true and correct copy of all income tax returns for the previous tax year filed on his or her behalf with the federal government. The defendant is not required to provide any particular document if to do so would violate federal law or the law of the state in which the document was filed. However, this section shall supersede all other laws in this state concerning the right to privacy with respect to tax returns filed with this state. If, during the term of probation, the defendant intentionally fails to provide the county financial officer with any document that he or she knows is required to be provided under this subdivision, that failure shall constitute a violation of probation.

(2) A statement of income, assets, and liabilities as defined in subdivision (j).

(i) The submission by the defendant of any tax document pursuant to paragraph (1) of subdivision (h) that the defendant knows does not accurately state the defendant's income, or if required, the defendant's personal property, if the inaccuracy is material, constitutes a violation of probation.

(j) A statement of income, assets, and liabilities form, that is consistent with the disclosure requirements of this section, may be established by the financial officer of each county. That statement shall require the defendant to furnish relevant financial information identifying the defendant's income, assets, possessions, or liabilities, actual or contingent. The statement may include the following:

(1) All real property in which the defendant has any interest.

(2) Any item of personal property worth more than three thousand dollars ($3,000) in which the defendant has any interest, including, but not limited to, vehicles, airplanes, boats, computers, and consumer electronics. Any collection of jewelry, coins, silver, china, artwork, antiques, or other collectibles in which the defendant has any interest, if that collection is worth more than three thousand dollars ($3,000).

(3) All domestic and foreign assets in the defendant's name, or in the name of the defendant's spouse or minor children, of a value over three thousand dollars ($3,000) and in whatever form, including, but not limited to, bank accounts, securities, stock options, bonds, mutual funds, money market funds, certificates of deposits, annuities, commodities, precious metals, deferred compensation accounts, individual retirement accounts, and related or analogous accounts.

(4) All insurance policies in which the defendant or the defendant's spouse or minor children retain a cash value.

(5) All pension funds in which the defendant has a vested right.

(6) All insurance policies of which the defendant is a beneficiary.

(7) All contracts, agreements, judgments, awards, or prizes granting the defendant the right to receive money or real or personal property in the future, including alimony and child support.

(8) All trusts of which the defendant is a beneficiary.

(9) All unrevoked wills of a decedent if the defendant or defendant's spouse or minor child is a beneficiary.

(10) All lawsuits currently maintained by the defendant or by or against a corporation in which the defendant owns more than a 25 percent interest if the suit includes a prayer for damages.

(11) All corporations of which the defendant is an officer. If the defendant is an officer in a corporation sole, subchapter S corporation, or closely held corporation, and controls more equity of that corporation than any other individual, the county financial officer shall have authority to request other records of the corporation.

(12) All debts in excess of three thousand dollars ($3,000) owed by the defendant to any person or entity.

(13) Copies of all applications for loans made by the defendant during the last year.

(14) All encumbrances on any real and personal property in which the defendant has any interest.

(15) All sales, transfers, assignments, quitclaims, conveyances, or encumbrances of any interest in real or personal property of a value exceeding three thousand dollars ($3,000) made by the defendant during the period beginning one year before charges were filed to the present, including the identity of the recipient of same, and relationship, if any, to the defendant.

(k) The information contained in the statement of income, assets, and liabilities shall not be available to the public. Information received pursuant to this subdivision shall not be disclosed to any member of the public. Any disclosure in violation of this section shall be a contempt of court punishable by a fine not exceeding one thousand dollars ($1,000), and shall also create a civil cause of action for damages.

(*l*) After providing the statement of income, assets, and liabilities, the defendant shall provide the county financial officer with copies of any documents representing or reflecting the financial information set forth in subdivision (j) as requested by that officer.

(m) The defendant shall sign the statement of income, assets, and liabilities under penalty of perjury. The provision of information known to be false, or the intentional failure to provide material information knowing that it was required to have been provided, shall constitute a violation of probation.

(n) The Franchise Tax Board and the Employment Development Department shall release copies of income tax returns filed by the defendant and other information concerning the defendant's current income and place of employment to the county financial officer upon request. That information shall be kept confidential and shall not be made available to any member of the public. Any unauthorized release shall be subject to subdivision (k). The county shall reimburse the reasonable administrative expenses incurred by those agencies in providing this information.

(o) During the term of probation, the defendant shall notify the county financial officer in writing within 30 days, after receipt from any source of any money or real or personal property that has a value of over five thousand dollars ($5,000), apart from the salary from the defendant's and the defendant's spouse's regular employment. The defendant shall report the source and value of the money or real or personal property received. This information shall not be made available to the public or the victim. Any unauthorized release shall be subject to subdivision (k).

(p) The term of probation in all cases shall be 10 years. However, after the defendant has served five years of probation, the defendant shall be released from all terms and conditions of probation except those terms and conditions included within this section. A court may

not revoke or otherwise terminate probation within 10 years unless and until the defendant has satisfied both the restitution judgment and the surcharge, or the defendant is imprisoned for a violation of probation. Upon satisfying the restitution judgment, the defendant is entitled to a court order vacating that judgment and removing it from the public record. Amounts owing on the surcharge are forgiven upon completion of the term of probation.

(q) The county financial officer shall establish a suggested payment schedule each year to ensure that the defendant remits amounts to make restitution to the victim and pay the surcharge. The county financial officer shall evaluate the defendant's current earnings, future earning capacity, assets (including assets that are in trust or in accounts where penalties may be incurred upon premature withdrawal of funds), and liabilities, and set payments to the county based upon the defendant's ability to pay. The defendant shall bear the burden of demonstrating the lack of his or her ability to pay. If the defendant objects to the suggested payment schedule, the court shall set the schedule. Express findings by the court as to the factors bearing on the payment schedule shall not be required. After the payment schedule is set, a defendant may request a change in the schedule upon a change of circumstances. The restitution schedule shall set a reasonable payment amount and shall not set payments in an amount that is likely to cause severe financial hardship to the defendant or his or her family.

(r) The willful failure to pay the amounts required by the payment schedule or to comply with the requirements of the county financial officer or the probation department pursuant to this section, if the defendant is able to pay or comply, is a violation of probation.

(s) In determining the defendant's ability to pay, the court shall consider whether the annual payment required, including any money or property seized to satisfy the restitution judgment, exceeds 15 percent of the defendant's taxable income for the previous year as identified on the defendant's tax return for the defendant's state of residence or on the defendant's federal tax return. If the defendant has filed a joint return, the defendant's income for purposes of this section shall be presumed to be the total of all wages earned by the defendant, plus one-half of all other nonsalary income listed on the tax return and accompanying schedules, unless the defendant demonstrates otherwise. The court shall also consider the defendant's current income and future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the payment schedule shall not be required.

(t) The defendant shall personally appear at any hearing held pursuant to any provision of this section unless the defendant is incarcerated or otherwise excused by the court, in which case the defendant may appear through counsel.

(u) Notwithstanding subdivision (d) of Section 1203.1, the county financial officer shall distribute proceeds collected by the county pursuant to this section as follows:

(1) If the restitution judgment has been satisfied, but the surcharge remains outstanding, all amounts paid by the defendant shall be kept by the county and applied to the surcharge.

(2) If the surcharge has been satisfied, but the restitution judgment has not been satisfied, all amounts submitted to the county shall be remitted to the victim.

(3) If neither judgment has been satisfied, the county shall remit 70 percent of the amounts collected to the victim. Those amounts shall be credited to the restitution judgment. The remaining 30 percent shall be retained by the county and credited toward the surcharge.

(v) Neither this section, nor the amendments to Section 12022.6 of the Penal Code enacted pursuant to Chapter 104 of the Statutes of 1992, are intended to lessen or otherwise mitigate sentences that could otherwise be imposed under any law in effect when the offense was committed.

(w) For the purpose of this section, a county may designate an appropriate employee of the county probation department, the department revenue, or any other analogous county department to act as the county financial officer pursuant to this section.

(x) This section shall remain in effect only until January 1, 2008, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date.

(y) This act shall be known as the Economic Crime Act of 1992.

SEC. 2. Section 12022.6 of the Penal Code is amended to read:

12022.6. (a) When any person takes, damages, or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows:

(1) If the loss exceeds fifty thousand dollars ($50,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of one year.

(2) If the loss exceeds one hundred fifty thousand dollars ($150,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of two years.

(3) If the loss exceeds one million dollars ($1,000,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years.

(4) If the loss exceeds two million five hundred thousand dollars ($2,500,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which

the defendant has been convicted, shall impose an additional term of four years.

(b) In any accusatory pleading involving multiple charges of taking, damage, or destruction, the additional terms provided in this section may be imposed if the aggregate losses to the victims from all felonies exceed the amounts specified in this section and arise from a common scheme or plan. All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

(c) The additional terms provided in this section shall not be imposed unless the facts of the taking, damage, or destruction in excess of the amounts provided in this section are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(d) This section applies to, but is not limited to, property taken, damaged, or destroyed in violation of Section 502 or subdivision (b) of Section 502.7. This section shall also apply to applicable prosecutions for a violation of Section 350, 653h, 653s, or 653w.

(e) For the purposes of this section, the term "loss" has the following meanings:

(1) When counterfeit items of computer software are manufactured or possessed for sale, the "loss" from the counterfeiting of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(2) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the "loss" from the counterfeiting of those components of computer software packages shall be equivalent to the retail price or fair market price of the number of completed computer software packages that could have been made from those components.

(f) It is the intent of the Legislature that the provisions of this section be reviewed within 10 years to consider the effects of inflation on the additional terms imposed. For that reason, this section shall remain in effect only until January 1, 2008, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date.

SEC. 3. Section 3 of Chapter 1334 of the Statutes of 1992 is repealed.

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.

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 552

An act to amend Sections 14105.98 and 14163 of the Welfare and Institutions Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 14105.98 of the Welfare and Institutions Code 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.

(25) "Public hospital" means a hospital that is licensed to a county, a city, a city and county, the State of California, the University of California, a local health care district, a local health authority, or any other political subdivision of the state.

(26) "Nonpublic hospital" means a hospital that does not meet the definition of a public hospital and does not meet the definition of a nonpublic/converted hospital.

(27) "Nonpublic/converted hospital" means a hospital that does not meet the definition of a public hospital, but, at any time during the 1994–95 payment adjustment year, was a public hospital as described in paragraph (25).

(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.

(7) As a limitation to paragraph (1), any amendment of this section enacted during the period September 1, 1997 to September 30, 1997, inclusive, shall not be implemented until the department has obtained any approvals that are appropriate under federal law. Until appropriate federal approvals are obtained, the payment adjustment program shall continue as though amendments had not been enacted during the period September 1, 1997 to September 30, 1997, inclusive. When appropriate federal approvals have been obtained, the amendments enacted during the period September 1, 1997 to September 30, 1997, 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 1997–98 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 24 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 that 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.

(ab) (1) For the 1997–98 payment adjustment year, eligible hospitals that meet the requirements of this subdivision and that remain in operation as of September 30, 1997, shall be eligible to receive a special supplemental payment adjustment, which shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date. For purposes of federal medicaid rules, including Section 447.297(d) of Title 42 of the Code of Federal Regulations, the special supplemental payment adjustments shall be applicable to the federal fiscal year that ends on September 30, 1997.

(2) The availability of special 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 1997 federal fiscal year.

(B) The total amount of all per diem payment adjustment amounts and supplemental payment adjustments under this section (exclusive of any payments under this subdivision) applicable to the 1997 federal fiscal year, whether paid or payable, shall be determined. The applicability of per diem payment adjustment amounts and supplemental payment adjustments of all types to the 1997 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, special supplemental payment adjustments shall be made under this subdivision in accordance with paragraph (3). The positive remainder shall be the maximum amount of special supplemental payment adjustments under this subdivision.

(3) (A) For purposes of these special supplemental payment adjustments, only hospitals that can be categorized into either of the two groups specified in clauses (i) and (ii) shall be eligible to receive the supplemental payment adjustments, and no hospital may qualify for more than one of the two groups. The following groups of hospitals shall be recognized:

(i) "Public hospitals," which shall include all eligible hospitals that, as of July 1, 1997, met the definition of a public hospital.

(ii) "Nonpublic hospitals," which shall include all eligible hospitals that, as of July 1, 1997, met the definition of a nonpublic hospital.

(B) The amount determined to be the maximum amount of special supplemental payment adjustments under subparagraph (C) of paragraph (2) shall first be allocated between the two groups of hospitals referred to in subparagraph (A) as follows:

(i) "Public hospitals": 74.885 percent of the maximum amount.

(ii) "Nonpublic hospitals": 25.115 percent of the maximum amount.

(C) The amount of funds allocated pursuant to subparagraph (B) to each of the particular groups of hospitals referred to in subparagraphs (A) and (B) shall then be distributed as special supplemental payment adjustments among the eligible hospitals within each particular group as follows:

(i) The department shall compute the projected total payment adjustment amounts for all eligible hospitals for the 1997–98 payment adjustment year, exclusive of any payments under this subdivision or subdivision (ad), by determining for each eligible hospital its total per diem composite amount and multiplying that figure by the maximum number of the hospital's Medi-Cal inpatient paid days determined under paragraph (2) of subdivision (*l*). For purposes of this clause, the determinations shall be without regard to the OBRA 1993 payment limitations.

(ii) The amount computed under clause (i) for each hospital described in subparagraph (A) shall be compared to the amount that is the product of multiplying 0.95 times 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 for the 1997–98 payment adjustment year.

(iii) Where the amount computed under clause (i) for the particular hospital is equal to or exceeds the product computed for the hospital under clause (ii), the hospital shall not receive a special supplemental payment adjustment. Data regarding hospitals that have reached this limitation shall not be used for purposes of clauses (v) through (viii).

(iv) Where the amount computed under clause (i) for the particular hospital is less than the product computed for the hospital under clause (ii), the amount computed under clause (i) for the hospital shall be used for purposes of clauses (v) through (viii).

(v) The figures determined under clause (iv) for each hospital in the particular group shall be added together to determine an aggregate total for each group.

(vi) The figures determined for each hospital under clause (iv) shall be divided by the aggregate total determined under clause (v) for the particular group, yielding a percentage figure for each hospital.

(vii) The percentage figure determined for each hospital under clause (vi) shall be applied to the maximum portion of the funds allocated to the particular group under subparagraph (B), to determine the hospital's pro rata share of the special supplemental payment adjustments. Except, however, in the case of a nonpublic hospital that, as of July 1, 1997, met the definition of a children's hospital, the pro rata share otherwise determined shall be multiplied by a factor of 1.09. The pro rata share for the other nonpublic hospitals

shall be reduced accordingly, so that the maximum portion of the funds allocated to the nonpublic hospitals group will not be exceeded.

(viii) In no event shall a hospital receive special supplemental payment adjustment amounts in excess of the difference between the product computed for the hospital under clause (ii) and the amount computed for the hospital under clause (i). Any special supplemental payment adjustment amount, or portion thereof, that otherwise would have been payable under this paragraph to a hospital, but that is barred by this limitation, shall be distributed on a descending pro rata basis to those hospitals within the same group.

(D) The department shall make interim and final payments of the special supplemental payment adjustments to hospitals on or before February 28, 1998.

(4) The department shall implement this subdivision only if consistent with federal medicaid law and the Medi-Cal State Plan, and only if the department determines that federal financial participation is available.

(ac) Notwithstanding any other provision of law, the payment adjustment program with respect to the period October 1, 1997 through June 30, 1998, shall be structured as set forth below and in subdivision (ad). However, if the effective date of the Medi-Cal State Plan amendment relating to this subdivision is later than October 1, 1997, as approved by the federal Health Care Financing Administration, all references in this subdivision to the period October 1, 1997, through June 30, 1998, shall be references to the period that commences on that effective date and continues through June 30, 1998.

(1) (A) The department shall utilize the computations made pursuant to clause (i) of subparagraph (C) of paragraph (3) of subdivision (ab) of the projected total payment adjustment amounts for all eligible hospitals for the entire 1997–98 payment adjustment year, exclusive of any supplemental payments under subdivision (ab) or (ad).

(B) The computed amount referred to in subparagraph (A) for each hospital 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.

(C) Where the computed amount referred to in subparagraph (A) for the particular hospital exceeds the OBRA 1993 payment limitation for the hospital, the amount computed under subparagraph (A) shall be reduced to an amount equal to the OBRA 1993 payment limitation for the particular hospital. The amount so reduced shall be used for purposes of subparagraph (E).

(D) Where the computed amount referred to in subparagraph (A) for the particular hospital is equal to or less than the OBRA 1993 payment limitation for the hospital, the computed amount referred

to in subparagraph (A) shall be used for purposes of subparagraph (E).

(E) The amounts determined under subparagraphs (C) and (D) for all eligible hospitals shall be added together, yielding an aggregate sum. The aggregate sum shall be the unadjusted projected total payment adjustment program for the entire 1997–98 payment adjustment year, exclusive of any supplemental payments under subdivision (ab) or (ad).

(2) The initial maximum size of the payment adjustment program for the entire 1997–98 payment adjustment year shall be set at one billion seven hundred fifty million dollars ($1,750,000,000), exclusive of any supplemental payments under subdivision (ab) or (ad).

(3) The department shall increase or decrease the amount determined for each eligible hospital under subparagraph (C) or (D) of paragraph (1), as applicable, by multiplying the amount by an identical percentage, yielding the hospital's tentative adjusted projected total payment adjustment amount for the 1997–98 payment adjustment year. The identical percentage figure to be used for this purpose shall be that percentage that is derived by dividing the amount set forth in paragraph (2) by the aggregate sum determined under subparagraph (E) of paragraph (1). Except, however, the amount determined for a hospital under subparagraph (C) or (D) of paragraph (*l*) shall not be increased such that it would exceed the OBRA 1993 payment limitation for the hospital.

(4) The tentative adjusted projected total payment adjustment amount computed for each eligible hospital under paragraph (3) shall be further adjusted as follows:

(A) (i) For each eligible hospital that met the definition of a nonpublic/converted hospital as of July 1, 1997, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "nonpublic/converted hospital adjustment factor." The applicable adjustment factor shall be that which is necessary to result in an amount, for each hospital, equal to the amount used for the particular hospital under subparagraph (E) of paragraph (1). The amount so adjusted shall be used for purposes of clause (iii).

(ii) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, applicable to the period July 1, 1997, through September 30, 1997, shall be determined for each hospital referred to in clause (i). The applicability of the per diem payment adjustment amounts to the period July 1, 1997, through September 30, 1997, 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. However, if the effective date of the Medi-Cal State Plan amendment relating to this subdivision is later than October 1, 1997, as approved by the federal Health Care Financing Administration, all determinations under this clause shall include per diem payment

adjustment amounts applicable to the period July 1, 1997, through the date that is one day prior to that effective date.

(iii) The amount determined for each hospital under clause (i) shall be reduced by the amount determined under clause (ii) for the hospital. The resulting figure shall be the final adjusted projected total payment adjustment amount for the hospital for the period October 1, 1997, through June 30, 1998, which shall be paid to the hospital in accordance with paragraph (5).

(B) (i) For each eligible hospital that met the definition of a nonpublic hospital as of July 1, 1997, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "nonpublic hospital adjustment factor." The applicable adjustment factor shall be derived as follows:

(I) The tentative adjusted projected total payment adjustment amounts determined under paragraph (3) for each nonpublic hospital described above shall be added together.

(II) The amount identified in paragraph (2) shall be divided by 2.38. The resulting figure shall then be reduced by the sum of the amounts determined for all nonpublic/converted hospitals under clauses (ii) and (iii) of subparagraph (A).

(III) The amount computed under subclause II shall be divided by 2, and the result thereof further reduced by the amount of thirty-seven million five hundred thousand dollars ($37,500,000).

(IV) The applicable adjustment factor shall be that ratio that results from dividing the amount derived in subclause (III) by the amount derived in subclause (I).

(ii) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, applicable to the period July 1, 1997, through September 30, 1997, shall be determined for each hospital referred to in clause (i). The applicability of the per diem payment adjustment amounts to the period July 1, 1997, through September 30, 1997, 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. However, if the effective date of the Medi-Cal State Plan amendment relating to this subdivision is later than October 1, 1997, as approved by the federal Health Care Financing Administration, all determinations under this clause shall include per diem payment adjustment amounts applicable to the period July 1, 1997, through the date that is one day prior to that effective date.

(iii) The amount determined for each hospital under clause (i) shall be reduced by the amount determined under clause (ii) for the hospital. The resulting figure shall be the final adjusted projected total payment adjustment amount for the hospital for the period October 1, 1997, through June 30, 1998, which shall be paid to the hospital in accordance with paragraph (5).

(C) (i) For each eligible hospital that met the definition of a public hospital as of July 1, 1997, the hospital's tentative adjusted

projected total payment adjustment amount shall be multiplied by a "public hospital adjustment factor." The applicable adjustment factor shall be derived as follows:

(I) The tentative adjusted projected total payment adjustment amounts determined under paragraph (3) for each public hospital described above shall be added together.

(II) The amount identified in paragraph (2) shall be reduced by the sum of the amounts determined for all nonpublic/converted hospitals under clauses (ii) and (iii) of subparagraph (A) and the sum of the amounts determined for all nonpublic hospitals under clauses (ii) and (iii) of subparagraph (B).

(III) The applicable adjustment factor shall be that ratio that results from dividing the amount derived in subclause (II) by the amount derived in subclause (I).

(ii) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, applicable to the period July 1, 1997, through September 30, 1997, shall be determined for each hospital referred to in clause (i). The applicability of the per diem payment adjustment amounts to the period July 1, 1997, through September 30, 1997, 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. However, if the effective date of the Medi-Cal State Plan amendment relating to this subdivision is later than October 1, 1997, as approved by the federal Health Care Financing Administration, all determinations under this clause shall include per diem payment adjustment amounts applicable to the period July 1, 1997, through the date that is one day prior to that effective date.

(iii) The amount determined for each hospital under clause (i) shall be reduced by the amount determined under clause (ii) for the hospital. The resulting figure shall be the final adjusted projected total payment adjustment amount for the hospital for the period October 1, 1997, through June 30, 1998, which shall be paid to the hospital in accordance with paragraph (5).

(C) (i) For each eligible hospital that met the definition of a public hospital as of July 1, 1997, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "public hospital adjustment factor." The applicable adjustment factor shall be derived as follows:

(I) The tentative adjusted projected total payment adjustment amounts determined under paragraph (3) for each public hospital described above shall be added together.

(II) The amount identified in paragraph (2) shall be reduced by the sum of the amounts determined for all nonpublic/converted hospitals under clauses (ii) and (iii) of subparagraph (A) and the sum of the amounts determined for all nonpublic hospitals under clauses (ii) and (iii) of subparagraph (B).

(III) The applicable adjustment factor shall be that ratio that results from dividing the amount derived in subclause (II) by the amount derived in subclause (I).

(ii) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, applicable to the period July 1, 1997, through September 30, 1997, shall be determined for each hospital referred to in cluase (i). The applicability of the per diem payment adjustment amounts to the period July 1, 1997, through September 30, 1997, 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. However, if the effective date of the Medi-Cal State Plan amendment relating to this subdivision is later than October 1, 1997, as approved by the federal Health Care Financing Administration, all determinations under this clause shall include per diem payment adjustment amounts applicable to the period July 1, 1997, through the date that is one day prior to that effective date.

(iii) The amount determined for each hospital under clause (i) shall be reduced by the amount determined under clause (ii) for the hospital. The resulting figure shall be the final adjusted projected total payment adjustment amount for the hospital for the period October 1, 1997, through June 30, 1998, which shall be paid to the hospital in accordance with paragraph (5).

(5) The final adjusted projected total payment adjustment amount determined for each eligible hospital for the period October 1, 1997, through June 30, 1998, shall be distributed in 16 or fewer equal installments to be paid no later than the 10th and 25th day of each month during the period that commences on the effective date of the Medi-Cal State Plan amendment relating to this subdivision, as approved by the federal Health Care Financing Administration, and continues through May 25, 1998.

(6) Notwithstanding any other provision of law, for the entire 1997–98 payment adjustment year, no eligible hospital shall receive total payment adjustments, including per diem payment adjustments , payments under this subdivision, and any supplemental payments under subdivision (ab) or (ad), 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 any special supplemental payment adjustments or supplemental lump-sum payment adjustments to the extent the payments would be inconsistent with subdivision (ab) or (ad), respectively.

(7) The aggregate sum of the final adjusted projected total payment adjustment amounts computed under paragraph (4) for each eligible hospital for the period October 1, 1997, through June 30, 1998, plus the aggregate sum of the amounts determined for each eligible hospital under clause (ii) of subparagraph (A) of paragraph (4), clause (ii) of subparagraph (B) of paragraph (4) and clause (ii) of subparagraph (C) of paragraph (4), shall be the maximum size of

the payment adjustment program for the entire 1997–98 payment adjustment year, exclusive of the special supplemental payment adjustments provided for under subdivision (ab) and the supplemental lump-sum payment adjustments provided for under subdivision (ad).

(8) The department shall implement this subdivision only if consistent with federal medicaid law and the Medi-Cal State Plan, and only if the department determines that federal financial participation is available.

(ad) (1) for the 1997–98 payment adjustment year, eligible hospitals that meet the requirements of this subdivision and that remain in operation as of June 30, 1998, shall 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.

(2) The amount of supplemental lump-sum payment adjustments available to hospitals under this subdivision shall be four hundred five million dollars ($405,000,000).

(3) (A) For purposes of these supplemental lump-sum payment adjustments, only hospitals that can be categorized into either of the two groups specified in clauses (i) and (ii) shall be eligible to receive the supplemental payment adjustments, and no hospital may qualify for more than one of the two groups. The following groups of hospitals shall be recognized:

(i) "Public hospitals," which shall include all eligible hospitals that, as of July 1, 1997, met the definition of a public hospital.

(ii) "Nonpublic hospitals," which shall include all eligible hospitals that, as of July 1, 1997, met the definition of a nonpublic hospital.

(B) The amount of supplemental lump-sum payment adjustments as referred to in paragraph (2) shall first be allocated between the two groups of hospitals referred to in subparagraph (A) as follows:

(i) "Public hospitals": 72.17 percent of the amount.

(ii) "Nonpublic hospitals": 27.83 percent of the amount.

(C) The amount of funds allocated pursuant to subparagraph (B) to each of the particular groups of hospitals referred to in subparagraphs (A) and (B) shall then be distributed as supplemental lump-sum payment adjustments among the eligible hospitals within each particular group as follows:

(i) The department shall identify for each eligible hospital the total amount of payment adjustments under this section (exclusive of any payments under this subdivision) applicable to the 1997–98 payment adjustment year, whether paid or payable. 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.

(ii) The amount identified 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 for the 1997–98 payment adjustment year.

(iii) Where the amount computed under clause (i) for the particular hospital is equal to or exceeds the OBRA 1993 payment limitation for the hospital, the hospital shall not receive a supplemental lump-sum payment adjustment. Data regarding hospitals that have reached this limitation shall not be used for purposes of clauses (v) through (viii).

(iv) 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) minus that amount paid or payable to the hospital under subdivision (ab) shall be used for purposes of clauses (v) through (viii).

(v) The figures determined under clause (iv) for each hospital in the particular group shall be added together to determine an aggregate total for each group.

(vi) The figures determined for each hospital under clause (iv) shall be divided by the aggregate total determined under clause (v) for the particular group, yielding a percentage figure for each hospital.

(vii) The percentage figure determined for each hospital under clause (vi) shall be applied to the maximum portion of the funds allocated to the particular group under subparagraph (B), to determine the hospital's pro rata share of the supplemental lump-sum payment adjustments. Except, however, in the case of a nonpublic hospital that, as of July 1, 1997, met the definition of a children's hospital, the pro rata share otherwise determined shall be multiplied by a factor of 1.09. The pro rata share for the other nonpublic hospitals shall be reduced accordingly, so that the maximum portion of the funds allocated to the nonpublic hospitals group will not be exceeded.

(viii) In no event shall a hospital receive supplemental lump-sum payment adjustment amounts in excess of the difference between the OBRA 1993 payment limitation for the hospital and the amount computed for the hospital under clause (i). Any supplemental lump-sum payment adjustment amount, or portion thereof, that otherwise would have been payable under this paragraph to a hospital, but that is barred by this limitation, shall be distributed on a descending pro rata basis to those hospitals within the same group.

(D) The department shall make interim and final payments of the supplemental lump-sum payment adjustments to hospitals on or before August 15, 1998.

(4) The department shall implement this subdivision only if consistent with federal medicaid law and the Medi-Cal State Plan, and only if the department determines that federal financial participation is available.

(ae) In the event that any provision of subdivision (ab), (ac), or (ad), as reflected in a proposed Medi-Cal State Plan amendment, is not approved by the federal Health Care Financing Administration, the director shall modify the proposed Medi-Cal State Plan amendment in a manner intended to be consistent with all applicable federal requirements. Subject to the requirements of federal law, in developing the modified proposed Medi-Cal State Plan amendment, the director shall, to the extent practicable, incorporate, implement, and modify, as necessary, the payment methodologies applicable to the 1997–98 payment adjustment year in a manner that is as consistent as possible with the approach and intent of subdivisions (ab), (ac), and (ad), respectively.

SEC. 2. Section 14163 of the Welfare and Institutions Code, as amended by Section 76 of Chapter 294 of the Statutes of 1997, 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 State of California, the University of California, a local health care 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.

(C) In the amount of one hundred fifty-four million seven hundred fifty-seven thousand six hundred ninety dollars ($154,757,690) for the 1997–98 fiscal year and each fiscal year thereafter.

(D) 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 1 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 payment adjustment amounts of all types that arise under Section 14105.98. For purposes of this paragraph, supplemental 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. However, for the 1997–98 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in the form of periodic installments according to a timetable established by the department. The timetable shall be structured to effectuate, on a reasonable basis, the prompt distribution of all nonsupplemental payment adjustments under Section 14105.98, and transfers to the Health Care Deposit Fund under subdivision (d).

(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, unless the donated funds will qualify under federal rules as a valid component of the nonfederal share of the Medi-Cal program and will be matched by federal funds. 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) Except as otherwise permitted by state and federal law, 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.

(q) (1) Any local initiative entity that has performed unanticipated additional work for the purposes identified in subparagraph (B) of paragraph (2) of subdivision (p) resulting in additional costs attributable to the development of its local initiative health delivery system, may file a claim for reimbursement with the department for the additional costs incurred due to delays in start dates through the 1996–97 fiscal year. Any such claim shall be filed by the local initiative entity not later than 90 days after the effective date of the act adding this subdivision, and shall not seek extra compensation for any sum that is or could have been asserted pursuant to the contract disputes and appeals resolution provisions of the local initiative entity's respective two-plan model contract. All claims for unanticipated additional incurred costs shall be submitted

with adequate supporting documentation including, but not limited to, all of the following:

(A) Invoices, receipts, job descriptions, payroll records, work plans, and other materials that identify the unanticipated additional claimed and incurred costs.

(B) Documents reflecting mitigation of costs.

(C) To the extent lost profits are included in the claim, documentation identifying those profits and the manner of calculation.

(D) Documents reflecting the anticipated start date, the actual start date, and reasons for the delay between the dates, if any.

(2) In determining any amount to be paid, the department shall do all of the following:

(A) Conduct a fiscal analysis of the local initiative entity's claimed costs.

(B) Determine the appropriate amount of payment, after taking into consideration the supporting documentation and the results of any audit.

(C) Provide funding for any such payment, as approved by the Department of Finance through the deficiency process.

(D) Complete the determination required in subparagraph (B) within six months after receipt of a local initiative entity's completed claim and supporting documentation. Prior to final determination, there shall be a review and comment period for that local initiative entity.

(E) Make reasonable efforts to obtain federal financial participation. In the event federal financial participation is not allowed for this payment, the state's payment shall be 50 percent of the total amount determined to be payable.

SEC. 3. The State Department of Health Services shall take such steps as are necessary to have published on or before September 29, 1997, 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 September 30, 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. 4. The State Department of Health Services shall implement subdivisions (ab) and (ad), respectively, of Section 14105.98 of the Welfare and Institutions Code only if those provisions, including any modifications made in accordance with subdivision (ae) of that section, are approved by the federal Health Care Financing Administration as part of the Medi-Cal State Plan. The

State Department of Health Services shall submit to the Health Care Financing Administration, by September 29, 1997, an amendment to the Medi-Cal State Plan to implement the provisions of Section 4721(e) of the federal Balanced Budget Act of 1997 (P.L. 105-33). Notwithstanding any other provision of law, subdivisions (ab) and (ad), respectively, of Section 14105.98 of the Welfare and Institutions Code shall be operative only if the provisions of Section 4721(e) of the federal Balanced Budget Act of 1997 have been incorporated into the Medi-Cal State Plan in a fashion to ensure appropriate federal financial participation in support of the payment adjustments described in those respective subdivisions.

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 553

An act to add Section 11379.9 to the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 11379.9 is added to the Health and Safety Code, to read:

11379.9. Except as provided by Section 11379.7, any person convicted of a violation of, or of an attempt to violate, subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the offense causes the death or great bodily injury of another person other than an accomplice, shall, in addition and consecutive to any other punishment authorized by law, be punished by an additional term of one year in the state prison for each death or injury.

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 554

An act to amend Sections 502.8 and 537e of the Penal Code, relating to crimes.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 502.8 of the Penal Code is amended to read:

502.8. (a) Any person who knowingly advertises illegal telecommunications equipment is guilty of a misdemeanor.

(b) Any person who possesses or uses illegal telecommunications equipment intending to avoid the payment of any lawful charge for telecommunications service or to facilitate other criminal conduct is guilty of a misdemeanor.

(c) Any person found guilty of violating subdivision (b), who has previously been convicted of the same offense, shall be guilty of a felony, punishable by imprisonment in state prison, a fine of up to fifty thousand dollars ($50,000), or both.

(d) Any person who possesses illegal telecommunications equipment with intent to sell, transfer, or furnish or offer to sell, transfer, or furnish the equipment to another, intending to avoid the payment of any lawful charge for telecommunications service or to facilitate other criminal conduct is guilty of a misdemeanor punishable by one year in a county jail or imprisonment in state prison or a fine of up to ten thousand dollars ($10,000), or both.

(e) Any person who possesses 10 or more items of illegal telecommunications equipment with intent to sell or offer to sell the equipment to another, intending to avoid payment of any lawful charge for telecommunications service or to facilitate other criminal conduct, is guilty of a felony, punishable by imprisonment in state prison, a fine of up to fifty thousand dollars ($50,000), or both.

(f) Any person who manufactures 10 or more items of illegal telecommunications equipment with intent to sell or offer to sell the equipment to another, intending to avoid the payment of any lawful charge for telecommunications service or to facilitate other criminal conduct is guilty of a felony punishable by imprisonment in state prison or a fine of up to fifty thousand dollars ($50,000), or both.

(g) For purposes of this section, "illegal telecommunications equipment" means equipment that operates to evade the lawful charges for any telecommunications service; surrepticiously intercept electronic serial numbers or mobile identification numbers; alter electronic serial numbers; circumvent efforts to confirm legitimate access to a telecommunications account; conceal from any telecommunications service provider or lawful authority the existence, place of origin, or destination of any telecommunication; or otherwise facilitate any other criminal conduct. "Illegal telecommunications equipment" includes, but is not limited to, any unauthorized electronic serial number or mobile identification number, whether incorporated into a wireless telephone or other device or otherwise. Items specified in this paragraph shall be considered illegal telecommunications equipment notwithstanding any statement or disclaimer that the items are intended for educational, instructional, or similar purposes.

(h) (1) In the event that a person violates the provisions of this section with the intent to avoid the payment of any lawful charge for telecommunications service to a telecommunications service provider, the court shall order the person to pay restitution to the telecommunications service provider in an amount that is the greater of the following:

(A) Five thousand dollars ($5,000).

(B) Three times the amount of actual damages, if any, sustained by the telecommunications service provider, plus reasonable attorney fees.

(2) It is not a necessary prerequisite to an order of restitution under this section that the telecommunications service provider has suffered, or be threatened with, actual damages.

SEC. 2. Section 537e of the Penal Code is amended to read:

537e. (a) Any person who knowingly buys, sells, receives, disposes of, conceals, or has in his or her possession any personal property from which the manufacturer's serial number, identification number, electronic serial number, or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed, is guilty of a public offense, punishable as follows:

(1) If the value of the property does not exceed four hundred dollars ($400), by imprisonment in a county jail not exceeding six months.

(2) If the value of the property exceeds four hundred dollars ($400), by imprisonment in a county jail not exceeding one year.

(3) If the property is an integrated computer chip or panel of a value of four hundred dollars ($400) or more, by imprisonment in the state prison for 16 months, or 2 or 3 years or by imprisonment in a county jail not exceeding one year.

For purposes of this subdivision, "personal property" includes, but is not limited to, the following:

(1) Any television, radio, recorder, phonograph, telephone, piano, or any other musical instrument or sound equipment.

(2) Any washing machine, sewing machine, vacuum cleaner, or other household appliance or furnishings.

(3) Any typewriter, adding machine, dictaphone, or any other office equipment or furnishings.

(4) Any computer, printed circuit, integrated chip or panel, or other part of a computer.

(5) Any tool or similar device, including any technical or scientific equipment.

(6) Any bicycle, exercise equipment, or any other entertainment or recreational equipment.

(7) Any electrical or mechanical equipment, contrivance, material, or piece of apparatus or equipment.

(8) Any clock, watch, watch case, or watch movement.

(9) Any vehicle or vessel, or any component part thereof.

(b) When property described in subdivision (a) comes into the custody of a peace officer it shall become subject to the provision of Chapter 12 (commencing with Section 1407) of Title 10 of Part 2, relating to the disposal of stolen or embezzled property. Property subject to this section shall be considered stolen or embezzled property for the purposes of that chapter, and prior to being disposed of, shall have an identification mark imbedded or engraved in, or permanently affixed to it.

(c) This section does not apply to those cases or instances where any of the changes or alterations enumerated in subdivision (a) have been customarily made or done as an established practice in the ordinary and regular conduct of business, by the original manufacturer, or by his or her duly appointed direct representative, or under specific authorization from the original manufacturer.

SEC. 3. 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. 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.

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CHAPTER 555

An act to amend Sections 1562.3 and 1569.616 of the Health and Safety Code, relating to care facilities.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1562.3 of the Health and Safety Code is amended to read:

1562.3. (a) The State Director of Social Services, in consultation with the State Director of Mental Health and the State Director of Developmental Services, shall establish a training program to ensure that licensees, operators, and staffs of adult residential facilities have appropriate training to provide the care and services for which a license or certificate is issued. The training program shall be developed in consultation with provider organizations.

(b) (1) An administrator of an adult residential care facility shall successfully complete a department approved certification program pursuant to subdivision (c) prior to employment.

(2) In those cases where the individual is both the licensee and the administrator of a facility, the individual shall comply with both the licensee and administrator requirements of this section.

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility.

(4) The licensee shall notify the department within 30 days of any change in administrators.

(c) (1) The administrator certification program shall require a minimum of 35 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of the type of facility for which the applicant will be an administrator.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial needs of the facility residents.

(E) Community and support services.

(F) Physical needs for facility residents.

(G) Use, misuse, and interaction of medication commonly used by facility residents.

(H) Resident admission, retention, and assessment procedures.

(I) Nonviolent crisis intervention for administrators.

(2) The requirement for 35 hours of classroom instruction pursuant to this subdivision shall not apply to persons who were employed as administrators prior to July 1, 1996. A person holding the position of administrator of an adult residential facility on June 30,

1996, shall file a completed application for certification with the department on or before April 1, 1998. In order to be exempt from the 35-hour training program and the test component, the application shall include documentation showing proof of continuous employment as the administrator of an adult residential facility between, at a minimum, June 30, 1994, and June 30, 1996. An administrator of an adult residential facility who became certified as a result of passing the department-administered challenge test, that was offered between October 1, 1996, and December 23, 1996, shall be deemed to have fulfilled the requirements of this paragraph.

(3) Unless an extension is granted to the applicant by the department, an applicant for an administrator's certificate shall, within 60 days of the applicant's completion of classroom instruction, pass the written test provided in this section.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars ($100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation from the applicant that he or she has passed the written test.

(4) Submission of fingerprints. The department and the Department of Justice shall expedite the criminal record clearance for holders of certificates of completion. The department may waive the submission for those persons who have a current clearance on file.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of an adult residential facility. Any person willfully making any false representation as being a certified administrator is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the core of knowledge specified in subdivision (c). For purposes of this section, an individual who is an adult residential facility administrator and who is required to complete the continuing education hours required by the regulations of the State Department of Developmental Services, and approved by the regional center, shall be permitted to have up to 24 of the required continuing education course hours credited toward the 40-hour continuing education requirement of this section. Community college course hours approved by the regional centers shall be accepted by the department for certification.

(2) Every licensee and administrator of an adult residential facility is required to complete the continuing education requirements of this subdivision.

(3) Certificates issued under this section shall expire every two years, on the anniversary date of the initial issuance of the certificate. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate is proof of compliance with this paragraph.

(5) A suspended or revoked certificate is subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall submit proof of compliance with paragraphs (1) and (2) of subdivision (f) and shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension. Delinquency fees, if any, accrued subsequent to the time of its revocation or suspension and prior to an order for reinstatement, shall be waived for one year to allow the individual sufficient time to complete the required continuing education units and to submit the required documentation. Individuals whose certificates will expire within 90 days after the order for reinstatement may be granted a three-month extension to renew their certificates during which time the delinquency fees shall not accrue.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification training program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars ($25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status within 30 days of any change.

(g) The certificate shall be considered forfeited under the following conditions:

(1) The administrator has had a license revoked, suspended, or denied as authorized under Section 1550.

(2) The administrator has been denied employment, residence, or presence in a facility based on action resulting from an administrative hearing pursuant to Section 1522 or Section 1558.

(h) (1) The department, in consultation with the Department of Mental Health and the Department of Developmental Services, shall establish, by regulation, the program content, the testing instrument, the process for approving certification training programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification training programs and continuing education courses. These regulations shall be developed in consultation with provider organizations, and shall be made available at least six months prior to the deadline required for certification. The department may deny vendor approval to any agency or person in any of the following circumstances:

(A) The applicant has not provided the department with evidence satisfactory to the department of the ability of the applicant to satisfy the requirements of vendorization set out in the regulations adopted by the department pursuant to subdivision (i).

(B) The applicant person or agency has a conflict of interest in that the person or agency places its clients in adult residential facilities.

(C) The applicant public or private agency has a conflict of interest in that the agency is mandated to place clients in adult residential facilities and to pay directly for the services. The department may deny vendorization to this type of agency only as long as there are other vendor programs available to conduct the certification training programs and conduct education courses.

(2) The department may authorize vendors to conduct the administrator's certification training program pursuant to provisions set forth in this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(3) The department shall prepare and maintain an updated list of approved training vendors.

(4) The department may inspect certification training programs and continuing education courses to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the intent of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(5) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(6) The department may charge a reasonable fee, not to exceed one hundred fifty dollars ($150) every two years to certification program vendors for review and approval of the initial 35-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee not to exceed one hundred dollars ($100) every two years for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(i) This section shall be operative upon regulations being adopted by the department, no later than July 1, 1996, to implement the administrator certification program as provided for in this section. If regulations are not adopted by the department, or are adopted after July 1, 1996, this section shall not become operative.

(j) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

SEC. 2. Section 1569.616 of the Health and Safety Code is amended to read:

1569.616. (a) (1) An administrator of a residential care facility for the elderly shall be required to successfully complete a department approved certification program prior to employment.

(2) In those cases where the individual is both the licensee and the administrator of a facility, or a licensed nursing home administrator, the individual shall comply with the requirements of this section unless he or she qualifies for one of the exemptions provided for in subdivision (b).

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility where an individual is functioning as the administrator. The licensee shall notify the department within 30 days of any change in administrators.

(b) Individuals seeking exemptions under paragraph (2) of subdivision (a) shall meet the following criteria and fulfill the required portions of the certification program, as the case may be:

(1) An individual designated as the administrator of a residential care facility for the elderly who holds a valid license as a nursing home administrator issued in accordance with Chapter 8.5 (commencing with Section 3901) of Division 2 of the Business and Professions Code shall be required to complete the areas in the uniform core of knowledge required by this section that pertain to the law, regulations, policies, and procedural standards that impact the operations of residential care facilities for the elderly, the use, misuse, and interaction of medication commonly used by the elderly in a residential setting, and resident admission, retention, and assessment procedures, equal to 12 hours of classroom instruction. An individual meeting the requirements of this paragraph shall not be required to take a written test.

(2) In those cases where the individual was both the licensee and administrator on or before July 1, 1991, the individual shall be required to complete all the areas specified for the certification program but shall not be required to take the written test required by this section. Those individuals exempted from the written test shall be issued a conditional certification that is valid only for the administrator of the facility for which the exemption was granted.

(A) As a condition to becoming an administrator of another facility the individual shall be required to pass the written test provided for in this section.

(B) As a condition to applying for a new facility license, the individual shall be required to pass the written test provided for in Section 1569.23.

(c) (1) The administrator certification program shall require a minimum of 40 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of residential care facilities for the elderly.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial needs of the elderly.

(E) Community and support services.

(F) Physical needs for elderly persons.

(G) Use, misuse, and interaction of medication commonly used by the elderly.

(H) Resident admission, retention, and assessment procedures.

(2) Individuals applying for certification under this section shall successfully complete an approved certification program, pass a written test administered by the department within 60 days of completing the program, and submit the documentation required by subdivision (d) to the department within 30 days of being notified of having passed the test. The department may extend these time deadlines for good cause. The department shall notify the applicant of his or her test results within 30 days of administering the test.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars ($100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation of passing the written test or of qualifying for an exemption pursuant to subdivision (b).

(4) Submission of fingerprints. The department and the Department of Justice shall expedite the criminal record clearance for holders of certificates of completion. The department may waive the submission for those persons who have a current clearance on file.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of a residential care facility for the elderly. Any person willfully making any false representation as being a certified administrator is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the core of knowledge specified in paragraph (1) of subdivision (c). For purposes of this section, individuals who hold a valid license as a nursing home administrator

issued in accordance with Chapter 8.5 (commencing with Section 3901) of Division 2 of the Business and Professions Code and meet the requirements of paragraph (1) of subdivision (b) shall only be required to complete 20 hours of continuing education.

(2) Every certified administrator of a residential care facility for the elderly is required to renew his or her certificate and shall complete the continuing education requirements of this subdivision whether he or she is certified according to subdivision (a) or (b).

(3) Certificates issued under this section shall expire every two years, on the anniversary date of the initial issuance of the certificate. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate is proof of compliance with this paragraph.

(5) A suspended or revoked certificate is subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars ($25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status within 30 days of any change.

(g) The department may revoke a certificate issued under this section for any of the following:

(1) Procuring a certificate by fraud or misrepresentation.

(2) Knowingly making or giving any false statement or information in conjunction with the application for issuance of a certificate.

(3) Criminal conviction unless an exemption is granted pursuant to Section 1569.17.

(h) The certificate shall be considered forfeited under the following conditions:

(1) The administrator has had a license revoked, suspended, or denied as authorized under Section 1569.50.

(2) The administrator has been denied employment, residence, or presence in a facility based on action resulting from an administrative hearing pursuant to Section 1569.58.

(i) (1) The department shall establish, by regulation, the program content, the testing instrument, the process for approving certification programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification programs and continuing education courses. These regulations shall be developed in consultation with provider organizations, and shall be made available at least six months prior to the deadline required for certification. The department may deny vendor approval to any agency or person that has not provided satisfactory evidence of their ability to meet the requirements of vendorization set out in the regulations adopted pursuant to subdivision (j).

(2) The department may authorize vendors to conduct the administrator certification training program pursuant to provisions set forth in this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(3) The department shall prepare and maintain an updated list of approved training vendors.

(4) The department may inspect training programs and continuing education courses to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the intent of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(5) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(6) The department may charge a reasonable fee, not to exceed one hundred fifty dollars ($150) every two years to certification program vendors for review and approval of the initial 40-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee not to exceed one hundred dollars ($100) every two years for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(j) This section shall be operative upon regulations being adopted by the department to implement the administrator certification program as provided for in this section.

(k) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

CHAPTER 556

An act to amend Sections 3059 and 3090 of, and to add Sections 3051, 3060, 3090.1, 3096.6, 3096.7, and 3107.1 to, the Business and Professions Code, relating to optometry, and making an appropriation therefor.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 3051 is added to the Business and Professions Code, to read:

3051. All applicants for examination for a certificate of registration in accordance with the educational and examination requirements adopted pursuant to Section 3023.1 shall show the board by satisfactory evidence that he or she has received education in child abuse detection and the detection of alcoholism and other chemical substance dependency. This section shall apply only to applicants who matriculate in a school of optometry on or after September 1, 1997.

SEC. 2. Section 3059 of the Business and Professions Code is amended to read:

3059. (a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their licenses. The board shall adopt regulations that require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

(d) The board may require that proof of compliance with this section be submitted on an annual or biennial basis as determined by the board.

(e) The board may adopt regulations to require licensees to maintain current certification in cardiopulmonary resuscitation. Training required for the granting or renewal of a cardiopulmonary certificate shall not be credited towards the requirements of subdivision (a) or (f).

(f) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 50 hours of continuing education every two years in order to renew his or her certificate. Thirty-five of the required 50 hours of continuing education shall be on the diagnosis, treatment, and management of ocular, systemic disease. This subdivision shall become operative only if legislation that requires the renewal of optometrists' licenses every two years is enacted during the 1995–96 Regular Session of the Legislature.

(g) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 25 hours of continuing education every year in order to renew his or her certificate. Eighteen of the required 25 hours of continuing education shall be on the diagnosis, treatment, and management of ocular, systemic disease. This subdivision shall become operative only if legislation that requires the renewal of optometrists' licenses every two years is not enacted during the 1995–96 Regular Session of the Legislature.

(h) The board shall encourage every optometrist to take a course or courses in pharmacology and pharmaceuticals as part of his or her continuing education.

(i) The board shall consider requiring courses in child abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected children.

(j) The board shall consider requiring courses in elder abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abuse or neglected elder persons.

SEC. 3. Section 3060 is added to the Business and Professions Code, to read:

3060. The board shall periodically develop and disseminate to all persons licensed to practice optometry information and educational material regarding all of the following:

(a) The detection of child abuse and neglect. The board shall consult with the Office of Child Abuse Prevention in developing the materials distributed pursuant to this subdivision.

(b) The detection of elder abuse and neglect. The board shall consult with the Adult Protective Services Division of the State Department of Social Services in developing the materials distributed pursuant to this subdivision.

SEC. 4. Section 3090 of the Business and Professions Code is amended to read:

3090. The certificate of registration of any person registered under this chapter, or any former act relating to the practice of optometry, may be revoked or suspended for a fixed period by the board for any of the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or of the rules and regulations adopted by the board pursuant to this chapter and in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) Unprofessional conduct.

(c) Gross ignorance.

(d) Inefficiency in his or her profession.

SEC. 5. Section 3090.1 is added to the Business and Professions Code, to read:

3090.1. (a) A licensee may be ordered to undergo a professional competency examination if, after investigation and review by the Board of Optometry, there is reasonable cause to believe that the licensee is unable to practice optometry with reasonable skill and safety to patients. Reasonable cause shall be demonstrated by one or more of the following: (1) a single incident of gross negligence; (2) a pattern of inappropriate prescribing; (3) an act of incompetence or negligence causing death or serious bodily injury; or (4) a pattern of substandard care.

(b) The results of a competency examination shall be admissible as direct evidence and may be considered relevant in any subsequent disciplinary or interim proceeding against the licensee taking the examination, and, assuming those results are determined to be relevant, shall be considered together with other relevant evidence in making a final determination.

SEC. 6. Section 3096.6 is added to the Business and Professions Code, to read:

3096.6. Knowingly making or signing any certificate or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct. Section 3120 shall not apply to this section.

SEC. 7. Section 3096.7 is added to the Business and Professions Code, to read:

3096.7. Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the State Board of Optometry may

impose a civil penalty of five hundred dollars ($500) for a violation of this section. Section 3120 shall not apply to this section.

SEC. 8. Section 3107.1 is added to the Business and Professions Code, to read:

3107.1. The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of this unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

CHAPTER 557

An act to amend Section 1270.1 of the Penal Code, relating to bail.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1270.1 of the Penal Code is amended to read:

1270.1. (a) Before any person who is arrested for any of the following crimes may be released on bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, or may be released on his or her own recognizance, a hearing shall be held in open court before the magistrate or judge:

(1) A serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, but not including a violation of subdivision (a) of Section 460 (residential burglary).

(2) A violation of Section 262, 273.5, or 646.9.

(3) A violation of paragraph (1) of subdivision (e) of Section 243.

(b) The prosecuting attorney and defense attorney shall be given a two court-day written notice and an opportunity to be heard on the matter. If the detained person does not have counsel, the court shall appoint counsel for purposes of this section only. The hearing required by this section shall be held within the time period prescribed in Section 825.

(c) At the hearing, the court shall consider evidence of past court appearances of the detained person, the maximum potential sentence that could be imposed, and the danger that may be posed to other persons if the detained person is released. In making the determination whether to release the detained person on his or her own recognizance, the court shall consider the potential danger to other persons, including threats that have been made by the detained person and any past acts of violence. The court shall also consider any

evidence offered by the detained person regarding his or her ties to the community and his or her ability to post bond.

(d) If the judge or magistrate sets the bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, the judge or magistrate shall state the reasons for that decision and shall address the issue of threats made against the victim or witness, if they were made, in the record. This statement shall be included in the record.

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 558

An act to amend Sections 1337.7, 1337.9, 1338.5, 1728.1, 1736.3, 1736.5, and 1736.6 of the Health and Safety Code, and to amend Sections 15671, 15673, and 15675 of the Welfare and Institutions Code, relating to health.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1337.7 of the Health and Safety Code is amended to read:

1337.7. (a) Fees shall be submitted along with nurse assistant applications and certificate renewal applications. The state department shall collect fees according to the following schedule:

(1) The training application fee shall be fifteen dollars ($15).

(2) The renewal fee for certified nurse assistants shall be no more than twenty dollars ($20).

(3) The renewal fee for persons who are certified as both nurse assistants and home health aides shall be no more than twenty dollars ($20).

(4) The delinquency fee for late renewals is ten dollars ($10).

(5) The duplicate fee for lost certificates is five dollars ($5).

(b) The penalty for submitting insufficient funds or any fictitious check, draft, or order on any bank or depository for payment of any fee to the state department shall be ten dollars ($10).

SEC. 2. Section 1337.9 of the Health and Safety Code, as amended by Chapter 220 of the Statutes of 1997, is amended to read:

1337.9. (a) The state department may deny an application for, or initiate an action to suspend or revoke, a nurse assistant, or deny a training and examination application.

(b) The state department shall deny a training and examination application and deny, suspend, or revoke a certificate issued under this article if the applicant or certificate holder has been convicted of a violation or attempted violation of any one or more of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 488, 496, 503, 518, or 666, unless any of the following applies:

(1) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of the Penal Code and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(2) The person was convicted of a misdemeanor and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(3) The certificate holder was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department, and the department has made a determination in accordance with law that the conviction does not disqualify the applicant from certification.

(c) An application or certificate shall be denied, suspended, or revoked upon conviction in another state of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in subdivision (b), unless evidence of rehabilitation comparable to the certificate of rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of subdivision (b) is provided.

(d) The state department may deny an application or deny, suspend, or revoke a certificate issued under this article for any of the following:

(1) Unprofessional conduct, including, but not limited to, incompetence, gross negligence, unless due to circumstances beyond the nurse assistant's control, physical, mental, or verbal abuse of patients, or misappropriation of property of patients or others.

(2) Conviction of a crime substantially related to the qualifications, functions, and duties of a certified nurse assistant, irrespective of a subsequent order under Section 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the state department determines that the applicant or certificate holder has not adequately demonstrated that he or she has been rehabilitated and will present a threat to the health, safety, or welfare of patients.

(3) Conviction for, or use of, any controlled substance as defined in Division 10 (commencing with Section 11000), or any dangerous drug, as defined in Section 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the certified nurse assistant, any other person, or the public, to the extent that this use would impair the ability to conduct, with safety to the public, the practice authorized by a certificate.

(4) Procuring a certified nurse assistant certificate by fraud or misrepresentation or mistake.

(5) Making or giving any false statement or information in conjunction with the application for issuance of a nurse assistant certificate or training and examination application.

(6) Impersonating any applicant, or acting as proxy for an applicant, in any examination required under this article for the issuance of a certificate.

(7) Impersonating another certified nurse assistant, a licensed vocational nurse, or a registered nurse, or permitting or allowing another person to use a certificate for the purpose of providing nursing services.

(8) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of, this article.

(e) When the state department determines that a certificate shall be suspended, the state department shall specify the period of actual suspension. The state department may determine that the suspension shall be stayed, placing the certificate holder on probation with specified conditions for a period not to exceed two years. When the state department determines that probation is the appropriate action, the certificate holder shall be notified that in lieu of the state department proceeding with a formal action to suspend the certification and in lieu of an appeal pursuant to subdivision (h), the certificate holder may request to enter into a diversion program agreement. A diversion program agreement shall specify terms and conditions related to matters, including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs. If a certificate holder successfully completes a diversion program, no action shall be taken upon the allegations that were the basis for the diversion agreement. Upon failure of the certificate holder to comply with the terms and conditions of an agreement, the state department may proceed with a formal action to suspend or revoke the certification.

(f) A plea or verdict of guilty, or a conviction following a plea of nolo contendere shall be deemed a conviction within the meaning of this article. The state department may deny an application or deny, suspend, or revoke a certification based on a conviction as provided in this article when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(g) Upon determination to deny an application or deny, revoke, or suspend a certificate, the state department shall notify the applicant or certificate holder in writing by certified mail of all of the following:

(1) The reasons for the determination.

(2) The applicant's or certificate holder's right to appeal the determination if the determination was made under subdivision (d).

(h) (1) Upon written notification that the state department has determined that an application shall be denied or a certificate shall be denied, suspended, or revoked under subdivision (d), the applicant or certificate holder may request an administrative hearing by submitting a written request to the state department within 20 business days of receipt of the written notification. Upon receipt of a written request, the state department shall hold an administrative hearing pursuant to the procedures specified in Section 100171, except where those procedures are inconsistent with this section.

(2) A hearing under this section shall be conducted by a hearing officer or administrative law judge designated by the director at a location, other than the work facility, convenient to the applicant or certificate holder. The hearing shall be tape recorded and a written decision shall be sent by certified mail to the applicant or certificate holder within 30 calendar days of the hearing. Except as specified in subdivision (i), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date shall be 21 business days from written notification of the department's determination to revoke or suspend.

(i) The state department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (g). If the certificate holder requests an administrative hearing pursuant to subdivision (h), the state department shall hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the certificate holder within 30 calendar days of the hearing.

(j) Upon the expiration of the term of suspension, he or she shall be reinstated by the state department and shall be entitled to resume

practice unless it is established to the satisfaction of the state department that the person has practiced as a certified nurse assistant in this state during the term of suspension. In this event, the state department shall revoke the person's certificate.

(k) Upon a determination to deny an application or deny, revoke, or suspend a certificate, the state department shall notify the employer of the applicant or certificate holder in writing of that determination, and whether the determination is final, or whether a hearing is pending relating to this determination. If a licensee or facility is required to deny employment or terminate employment of the employee based upon notice from the state that the employee is determined to be unsuitable for employment under this section, the licensee or facility shall not incur criminal, civil, unemployment insurance, workers' compensation, or administrative liability as a result of that denial or termination.

SEC. 3. Section 1338.5 of the Health and Safety Code is amended to read:

1338.5. (a) (1) A criminal record clearance shall be conducted for all nurse assistants by the submission of fingerprint cards to the state department for processing at the Department of Justice. This criminal record clearance shall be completed prior to issuing or renewing a certificate. Applicants shall be responsible for any costs associated with rolling the fingerprint cards. The fee to cover the processing costs of the Department of Justice, not including the costs associated with rolling the fingerprint cards, shall not exceed thirty-two dollars ($32) per card.

(2) (A) Upon enrollment in a training program for nurse assistant certification, and prior to direct contact with residents, a candidate for training shall submit a training and examination application and the fingerprint cards to the state department to receive a criminal record review through the Department of Justice. Submission of the fingerprints to the Federal Bureau of Investigation shall be at the discretion of the state department.

(B) New nurse assistant applicants who are unemployed and unable to pay the fee charged by the Department of Justice pursuant to paragraph (1) of subdivision (a) due to financial hardship may request a waiver for a period not to exceed six months. The request for waiver shall be made in writing at the time the fingerprint card is submitted for processing. The applicant shall agree to pay the fee within six months of employment. The failure to pay the fee within the six-month period shall result in the inactivation of the applicant's certificate until the fee is paid in full.

(b) Upon receipt of the fingerprints, the Department of Justice shall notify the state department of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the state department with a statement of that fact. If the fingerprints are illegible, the Department of Justice shall, within 15 calendar days

from receipt of the fingerprints, notify the state department of that fact.

(c) The department shall respond to the applicant and employer within 30 days from the date of receipt of the fingerprint cards.

(d) A criminal record clearance, consistent with this section shall be implemented for nursing assistant applicants beginning July 1, 1998, and phased in for all renewals of certificates by June 30, 2000.

(e) The use of fingerprint live scan technology implemented by the Department of Justice by the year 1999 shall be used by the Department of Justice to generate timely and accurate positive fingerprint identification prior to nurse assistant certification.

SEC. 4. Section 1728.1 of the Health and Safety Code is amended to read:

1728.1. (a) To qualify for a home health agency license, the following requirements shall be met:

(1) Every applicant shall satisfy the following conditions:

(A) Be of good moral character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, all principal managing members thereof, and the person in charge of the agency for which application for license is made, shall satisfy this requirement. If the applicant is a political subdivision of the state or other governmental agency, the person in charge of the agency for which application for license is made, shall satisfy this requirement.

(B) Possess and demonstrate the ability to comply with this chapter and the rules and regulations adopted under this chapter by the state department.

(C) File his or her application pursuant to and in full compliance with this chapter.

(2) The following persons shall submit to the State Department of Health Services an application, including fingerprints, for the furnishing of the person's criminal record to the state department, at the person's expense as provided in subdivision (b), for the purpose of a criminal record review:

(A) The owner or owners of a private agency if the owners are individuals.

(B) If the owner of a private agency is a corporation, partnership, or association, any person having a 10 percent or greater interest in that corporation, partnership, or association.

(C) The administrator of a home health agency.

(b) The persons specified in paragraph (2) of subdivision (a) shall be responsible for any costs associated with rolling the fingerprint cards. The fee to cover the processing costs of the Department of Justice, not including the costs associated with rolling the fingerprint cards, shall not exceed thirty-two dollars ($32) per card.

(c) If the criminal record review conducted pursuant to paragraph (2) of subdivision (a) discloses a conviction for a felony or any crime that evidences an unfitness to provide home health

services, the application for a license shall be denied or the person shall be prohibited from providing service in the home health agency applying for a license. This subdivision shall not apply to deny a license or prohibit the provision of service if the person presents evidence satisfactory to the state department that the person has been rehabilitated and presently is of such good character as to justify the issuance of the license or the provision of service in the home health agency.

SEC. 5. Section 1736.3 of the Health and Safety Code is amended to read:

1736.3. (a) Fees shall be submitted with home health aide training certificate renewal applications. The state department shall collect fees according to the following schedule:

(1) The training application fee shall be fifteen dollars ($15).

(2) The renewal fee for certified home health aides shall be no more than twenty dollars ($20).

(3) The renewal fee for persons who are certified as both home health aides and nurse assistants shall be no more than twenty dollars ($20).

(4) The duplicate fee for lost certificates shall be five dollars ($5).

(5) The delinquency fee for late renewals is ten dollars ($10).

(b) The penalty for submitting insufficient funds or any fictitious check, draft, or order on any bank or depository for payment of any fee to the state department shall be ten dollars ($10).

SEC. 6. Section 1736.5 of the Health and Safety Code, as amended by Chapter 220 of the Statutes of 1997, is amended to read:

1736.5. (a) The state department shall deny a training application and deny, suspend, or revoke a certificate issued under this article if the applicant or certificate holder has been convicted of a violation or attempted violation of any of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 488, 496, 503, 518, or 666, unless any of the following apply:

(1) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of the Penal Code and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(2) The person was convicted of a misdemeanor and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(3) The certificate holder was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction

to the department, and the department has made a determination in accordance with law that the conviction does not disqualify the applicant from certification.

(b) An application or certificate shall be denied, suspended, or revoked upon conviction in another state of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in subdivision (a), unless evidence of rehabilitation comparable to the certificate of rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of subdivision (a) is provided.

(c) The state department may deny an application or deny, suspend, or revoke a certificate issued under this article for any of the following:

(1) Unprofessional conduct, including, but not limited to, incompetence, gross negligence, physical, mental, or verbal abuse of patients, or misappropriation of property of patients or others.

(2) Conviction of a crime substantially related to the qualifications, functions, and duties of a home health aide, irrespective of a subsequent order under Section 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the state department determines that the applicant or certificate holder has not adequately demonstrated that he or she has been rehabilitated and will present a threat to the health, safety, or welfare of patients.

(3) Conviction for, or use of, any controlled substance as defined in Division 10 (commencing with Section 11000), or any dangerous drug, as defined in Section 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the home health aide, any other person, or the public, to the extent that this use would impair the ability to conduct, with safety to the public, the practice authorized by a certificate.

(4) Procuring a home health aide certificate by fraud, misrepresentation, or mistake.

(5) Making or giving any false statement or information in conjunction with the application for issuance of a home health aide certificate or training and examination application.

(6) Impersonating any applicant, or acting as proxy for an applicant, in any examination required under this article for the issuance of a certificate.

(7) Impersonating another home health aide, a licensed vocational nurse, or a registered nurse, or permitting or allowing another person to use a certificate for the purpose of providing nursing services.

(8) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of, this article.

(d) When the state department determines that a certificate shall be suspended, the state department shall specify the period of actual suspension. The state department may determine that the

suspension shall be stayed, placing the certificate holder on probation with specified conditions for a period not to exceed two years. When the state department determines that probation is the appropriate action, the certificate holder shall be notified that in lieu of the state department proceeding with a formal action to suspend the certification and in lieu of an appeal pursuant to subdivision (g), the certificate holder may request to enter into a diversion program agreement. A diversion program agreement shall specify terms and conditions related to matters, including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs. If a certificate holder successfully completes a diversion program, no action shall be taken upon the allegations that were the basis for the diversion agreement. Upon failure of the certificate holder to comply with the terms and conditions of an agreement, the state department may proceed with a formal action to suspend or revoke the certification.

(e) A plea or verdict of guilty, or a conviction following a plea of nolo contendere, shall be deemed a conviction within the meaning of this article. The state department may deny an application or deny, suspend, or revoke a certification based on a conviction as provided in this article when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(f) Upon determination to deny an application or deny, revoke, or suspend a certificate, the state department shall notify the applicant or certificate holder in writing by certified mail of all of the following:

(1) The reasons for the determination.

(2) The applicant's or certificate holder's right to appeal the determination if the determination was made under subdivision (c).

(g) (1) Upon written notification that the state department has determined that an application shall be denied or a certificate shall be denied, suspended, or revoked under subdivision (c), the applicant or certificate holder may request an administrative hearing by submitting a written request to the state department within 20 business days of receipt of the written notification. Upon receipt of a written request, the state department shall hold an administrative hearing pursuant to the procedures specified in Section 100171, except where those procedures are inconsistent with this section.

(2) A hearing under this section shall be conducted by a hearing officer or administrative law judge designated by the director at a location other than the work facility convenient to the applicant or certificate holder. The hearing shall be tape recorded and a written decision shall be sent by certified mail to the applicant or certificate holder within 30 calendar days of the hearing. Except as specified in subdivision (h), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date shall be

21 business days from written notification of the department's determination to revoke or suspend.

(h) The state department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (f). If the certificate holder requests an administrative hearing pursuant to subdivision (g), the state department shall hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the certificate holder within 30 calendar days of the hearing.

(i) Upon the expiration of the term of suspension, he or she shall be reinstated by the state department and shall be entitled to resume practice unless it is established to the satisfaction of the state department that the person has practiced as a home health aide in California during the term of suspension. In this event, the state department shall revoke the person's certificate.

(j) Upon a determination to deny an application or deny, revoke, or suspend a certificate, the department shall notify the employer of the applicant or certificate holder in writing of that determination, and whether the determination is final, or whether a hearing is pending relating to this determination. If a licensee or facility is required to deny employment or terminate employment of the employee based upon notice from the state that the employee is determined to be unsuitable for employment under this section, the licensee or facility shall not incur criminal, civil, unemployment insurance, workers' compensation, or administrative liability as a result of that denial or termination.

SEC. 7. Section 1736.6 of the Health and Safety Code is amended to read:

1736.6. (a) (1) A criminal record clearance shall be conducted for all home health aides by the submission of fingerprint cards to the state department for processing at the Department of Justice. This criminal record clearance shall be completed prior to issuing or renewing a certificate. Applicants shall be responsible for any costs associated with rolling the fingerprint cards. The fee to cover the processing costs of the Department of Justice, not including the costs associated with rolling the fingerprint cards, shall not exceed thirty-two dollars ($32) per card.

(2) (A) Upon enrollment in a training program for home health aide certification, and prior to direct contact with residents, a candidate for training shall submit a training and examination application and the fingerprint cards to the state department to receive a criminal record review through the Department of Justice.

Submission of the fingerprints to the Federal Bureau of Investigation shall be at the discretion of the state department.

(B) New home health aide applicants who are unemployed and unable to pay the fee charged by the Department of Justice pursuant to paragraph (1) of subdivision (a) due to financial hardship may request a waiver for a period not to exceed six months. The request for waiver shall be made in writing at the time the fingerprint card is submitted for processing. The applicant shall agree to pay the fee within six months of employment. The failure to pay the fee within the six-month period shall result in the inactivation of the applicant's certificate until the fee is paid in full.

(b) Upon receipt of the fingerprints, the Department of Justice shall notify the state department of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the state department with a statement of that fact. If the fingerprints are illegible, the Department of Justice shall, within 15 calendar days from receipt of the fingerprints, notify the state department of that fact.

(c) The department shall respond to the applicant and employer within 30 days from the date of receipt of the fingerprint cards.

(d) A criminal record clearance, consistent with this section shall be implemented for home health aide applicants beginning July 1, 1998, and phased in for all certified home health aides by June 30, 2000.

(e) The use of fingerprint live scan technology implemented by the Department of Justice by the year 1999 shall be used by the Department of Justice to generate timely and accurate positive fingerprint identification prior to home health aide certification.

SEC. 8. Section 15671 of the Welfare and Institutions Code is amended to read:

15671. (a) All initial certified nurse assistant and certified home health aide applicants, shall as a requirement for certification, undergo a criminal background check pursuant to Section 1338.5 of the Health and Safety Code.

(b) Nurse assistants certified prior to July 1, 1998, shall, as a condition of renewal of their certificates, undergo a criminal background check pursuant to subdivision (a) of Section 1337.6 and Section 1338.5 of the Health and Safety Code. Commencing July 1, 1998, pursuant to Section 1338.5 of the Health and Safety Code, nurse assistant applicants whose applications were submitted on or after July 1, 1998, shall undergo a criminal background check.

SEC. 9. Section 15673 of the Welfare and Institutions Code is amended to read:

15673. Home health aides certified prior to July 1, 1998, shall, as a condition of renewal of their certificates, undergo a criminal background check pursuant to Section 1736.6 of the Health and Safety Code. Commencing July 1, 1998, pursuant to Section 1736.6 of

the Health and Safety Code, home health aide applicants whose applications are submitted on or after July 1, 1998, shall undergo a criminal background check.

SEC. 10. Section 15675 of the Welfare and Institutions Code is amended to read:

15675. (a) Unless otherwise prohibited by law, the Department of Justice shall make available to the State Department of Health Services, at no cost, access to the California Law Enforcement Telecommunications System as established pursuant to Chapter 2.5 (commencing with Section 15150) of Part 6 of Division 3 of Title 2 of the Government Code.

(b) (1) As an alternative to the requirement of subdivision (a), the Department of Justice and the State Department of Health Services may negotiate and enter into a contract that specifies the method and terms upon which the cost of the Department of Justice to access the California Law Enforcement Telecommunications System for purposes of the State Department of Health Services are allocated between the respective departments.

(2) During the operation of this contract, subdivision (a) shall not apply. However, subdivision (a) shall apply upon the termination, for any reason, of the contract and the contract shall not contain provisions to the contrary.

(3) The contract shall not contain provisions inconsistent with any law that prescribes the extent to which an applicant for licensure, a permit, or certification, or employees, or volunteers shall or shall not pay for a criminal record background check.

CHAPTER 559

An act to amend Sections 8502 and 8801.5 of the Family Code, relating to family law.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 8502 of the Family Code is amended to read:

8502. (a) "Adoption service provider" means any of the following:

(1) A licensed private adoption agency.

(2) An individual who has presented satisfactory evidence to the department that he or she is a licensed clinical social worker who also has a minimum of five years of experience providing professional social work services while employed by a licensed California adoption agency or the department.

(3) In a state other than California, an adoption agency licensed or otherwise approved under the laws of that state, or an individual who is licensed or otherwise certified as a clinical social worker under the laws of that state.

(4) An individual who has presented satisfactory evidence to the department that he or she is a licensed marriage, family, and child counselor who has a minimum of five years of experience providing professional adoption casework services while employed by a licensed California adoption agency or the department. The department shall review the qualifications of each individual to determine if he or she has performed professional adoption casework services for five years as required by this section while employed by a licensed California adoption agency or the department.

(b) If, in the case of a birth parent located in California, at least three adoption service providers are not reasonably available, or, in the case of a birth parent located outside of California who has contacted at least three potential adoption service providers and been unsuccessful in obtaining the services of an adoption service provider who is reasonably available and willing to provide services, independent legal counsel for the birth parent may serve as an adoption service provider pursuant to subdivision (e) of Section 8801.5. "Reasonably available" means that an adoption service provider is all of the following:

(1) Available within five days for an advisement of rights pursuant to Section 8801.5, or within 24 hours for the signing of the placement agreement pursuant to paragraph (3) of subdivision (b) of Section 8801.3.

(2) Within 100 miles of the birth mother.

(3) Available for a cost not exceeding five hundred dollars ($500) to make an advisement of rights and to witness the signing of the placement agreement.

(c) Where an attorney acts as an adoption service provider, the fee to make an advisement of rights and to witness the signing of the placement agreement shall not exceed five hundred dollars ($500).

SEC. 2. Section 8801.5 of the Family Code is amended to read:

8801.5. (a) Each birth parent placing a child for adoption shall be advised of his or her rights by an adoption service provider.

(b) The birth parent shall be advised of his or her rights in a face-to-face meeting in which the birth parent may ask questions and have questions answered, as provided by Section 8801.3.

(c) The department shall prescribe the format and process for advising birth parents of their rights, the content of which shall include, but not be limited to, the following:

(1) The alternatives to adoption.

(2) The alternative types of adoption, including a description of the full procedures and timeframes involved in each type.

(3) The full rights and responsibilities of the birth parent with respect to adoption, including the need to keep the department

informed of his or her current address in case of a medical emergency requiring contact and of providing a full health history.

(4) The right to separate legal counsel paid for by the prospective adoptive parents upon the request of the birth parent, as provided for by Section 8800.

(5) The right to a minimum of three separate counseling sessions, each to be held on different days, to be paid for by the prospective adoptive parents upon the request of the birth parents, as provided for by subdivision (d).

(d) Each person advised pursuant to this section shall be offered at least three separate counseling sessions, to be held on different days. Each counseling session shall be not less than 50 minutes in duration. The counseling may be provided by the adoption service provider who informs the birth parent of his or her rights, or by another adoption service provider, or by a licensed psychotherapist, as defined by Section 1010 of the Evidence Code, as elected by the person, and after having been informed of these choices.

(e) The counselor owes a duty of care to the birth parent being counseled, similar to the duty of care established by a psychotherapist-patient relationship, regardless of who pays the fees of the counselor. No counselor shall have a contractual relationship with the adoptive parents, an attorney for the adoptive parents, or any other individual or an organization performing any type of services for the adoptive parents and for which the adoptive parents are paying a fee, except as relates to payment of the birth parents' fee.

(f) The advisement and counseling fees shall be paid by the prospective adoptive parents at the request of the birth parent.

(g) Failure to fulfill the duties specified in this section shall not be construed as a basis for setting aside the consent or the adoption, but may give rise to a cause of action for malpractice or negligence against those professionals or agencies serving as adoption service providers that are responsible for fulfilling the duties.

CHAPTER 560

An act to amend Section 11055 of the Health and Safety Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 11055 of the Health and Safety Code is amended to read:

11055. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

(A) Raw opium.
(B) Opium extracts.
(C) Opium fluid extracts.
(D) Powdered opium.
(E) Granulated opium.
(F) Tincture of opium.
(G) Apomorphine.
(H) Codeine.
(I) Ethylmorphine.
(J) Hydrocodone.
(K) Hydromorphone.
(L) Metopon.
(M) Morphine.
(N) Oxycodone.
(O) Oxymorphone.
(P) Thebaine.

(2) Any salt, compound, isomer, or derivative, whether natural or synthetic, of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy).

(6) Cocaine, except as specified in Section 11054.

(7) Ecgonine, whether natural or synthetic, or any salt, isomer, derivative, or preparation thereof.

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanyl.
(2) Alphaprodine.

(3) Anileridine.
(4) Bezitramide.
(5) Bulk dextropropoxyphene (nondosage forms).
(6) Dihydrocodeine.
(7) Diphenoxylate.
(8) Fentanyl.
(9) Isomethadone.
(10) Levoalphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM. This substance is authorized for the treatment of narcotic addicts under federal law (see Part 291 (commencing with Section 291.501) and Part 1308 (commencing with Section 1308.01) of Title 21 of the Code of Federal Regulations).
(11) Levomethorphan.
(12) Levorphanol.
(13) Metazocine.
(14) Methadone.
(15) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
(16) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
(17) Pethidine (meperidine).
(18) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
(19) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
(20) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
(21) Phenazocine.
(22) Piminodine.
(23) Racemethorphan.
(24) Racemorphan.
(25) Sufentanyl.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
(2) Methamphetamine, its salts, isomers, and salts of its isomers.
(3) Dimethylamphetamine (N,N-dimethylamphetamine), its salts, isomers, and salts of its isomers.
(4) N-Ethylmethamphetamine (N-ethyl, N-methylamphetamine), its salts, isomers, and salts of its isomers.
(5) Phenmetrazine and its salts.
(6) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation

which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital.

(2) Pentobarbital.

(3) Phencyclidines, including the following:

(A) 1-(1-phenylcyclohexyl) piperidine (PCP).

(B) 1-(1-phenylcyclohexyl) morpholine (PCM).

(C) Any analog of phencyclidine which is added by the Attorney General by regulation pursuant to this paragraph.

The Attorney General, or his or her designee, may, by rule or regulation, add additional analogs of phencyclidine to those enumerated in this paragraph after notice, posting, and hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Attorney General shall, in the calendar year of the regular session of the Legislature in which the rule or regulation is adopted, submit a draft of a proposed bill to each house of the Legislature which would incorporate the analogs into this code. No rule or regulation shall remain in effect beyond January 1 after the calendar year of the regular session in which the draft of the proposed bill is submitted to each house. However, if the draft of the proposed bill is submitted during a recess of the Legislature exceeding 45 calendar days, the rule or regulation shall be effective until January 1 after the next calendar year.

(4) Secobarbital.

(5) Glutethimide.

(6) Gamma-hydroxybutyrate.

(f) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(A) Phenylacetone. Some trade or other names: phenyl-2 propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine.

(B) 1-piperidinocyclohexane carbonitrile (PCC).

(g) Hallucinogenic substances. Any of the following hallucinogenic substances: dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration.

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.

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

Since November of 1990, there have been increasing reports of the dangers of the drug gamma-hydroxybutyrate. There have been reports that gamma-hydroxybutyrate has caused ailments ranging from nausea and respiratory problems to seizures and comas, and according to health care practitioners, the drug is very easy to overdose on and has a potential for causing death. This act would seek to reduce these dangerous occurrences by classifying the drug as a Schedule II controlled substance so that the drug would only be lawfully available for research and, under limited circumstances, upon prescription by a licensed health care practitioner. In order to protect the health and well-being of the public as soon as possible, it is necessary that this act go into immediate effect.

CHAPTER 561

An act to add and repeal Sections 1524.6, 1538.6, and 1538.7 of the Health and Safety Code, relating to community care facilities.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. (a) It is the intent of the Legislature in enacting this act to establish a pilot project relative to group homes, for the purpose of reducing complaints to the State Department of Social Services, by encouraging residents to work with group home operators to resolve concerns. The pilot project shall be limited to San Bernardino County.

(b) It is further the intent of the Legislature that the pilot project be designed to measure the increase or decrease in complaints to the Inland Empire Office-Residential of the State Department of Social Services about group homes located in San Bernardino County, as a result of the pilot project.

(c) The pilot project shall be deemed successful if, at the conclusion of the pilot project, monthly complaints to the Inland Empire Office-Residential of the State Department of Social Services about group homes located in San Bernardino County have been reduced by at least 10 percent, compared to the number of complaints that were received prior to the initiation of the pilot project.

(d) For purposes of this act, "group home" means any facility of any capacity that provides 24-hour nonmedical care and supervision to children in a structured environment with the services provided at least in part by staff employed by the licensee.

(e) This act shall not apply to family homes certified by foster family agencies, foster family homes, and small family homes. It is not the intent of the Legislature that this act be applied in a discriminatory manner.

(f) The pilot project established by this act shall terminate on January 1, 2001.

(g) Upon the conclusion of the pilot project established by this act, the State Department of Social Services shall report to the Legislature on the effectiveness of the pilot project, based upon the goals provided for by subdivision (c).

SEC. 2. Section 1524.6 is added to the Health and Safety Code, to read:

1524.6. (a) In addition to any other requirements of this chapter, any group home providing care for any number of persons that is not already subject to the requirements of Section 1524.5 shall provide a procedure approved by the licensing agency for immediate response to incidents and complaints. This procedure shall include a method of assuring that the owner, licensee, or person designated by the owner or licensee is notified of the incident, that the owner, licensee, or person designated by the owner or licensee has personally investigated the matter, and that the person making the complaint or reporting the incident has received a written response of action taken or a reason why no action needs to be taken.

(b) In order to assure the opportunity for complaints to be made directly to the owner, licensee, or person designated by the owner or licensee, and to provide the opportunity for the owner, licensee, or person designated by the owner or licensee to meet residents and learn of problems in the neighborhood, any group home shall establish a fixed time on a weekly basis when the owner, licensee, or person designated by the owner or licensee will be present.

(c) Facilities shall establish procedures to comply with the requirements of this section on or before July 1, 1998.

(d) For purposes of this section, "group home" means any facility of any capacity which provides 24-hour nonmedical care and supervision to children in a structured environment with such services provided at least in part by staff employed by the licensee.

(e) This section shall not apply to family homes certified by foster family agencies, foster family homes, and small family homes. It is not the intent of the Legislature that this section be applied in a discriminatory manner.

(f) This section shall apply only to a facility that is located in San Bernardino County.

(g) This section shall be repealed on January 1, 2001, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 3. Section 1538.6 is added to the Health and Safety Code, to read:

1538.6. (a) On or before July 1, 1998, the department shall develop a plan for creating a toll-free "800" number, that will provide free public telephone access from San Bernardino County to the Inland Empire Office-Residential, to allow the caller to request an inspection of any group home located in San Bernardino County, pursuant to this section. The department shall submit the plan to the Legislature on or before July 1, 1998, along with an estimated budget, and a description of any appropriation or legislation that would be required to effectuate the plan. Upon the implementation of a toll-free "800" number, the notice required pursuant to Section 1538.7 shall include the toll-free "800" number.

(b) For purposes of this section, "group home" means any facility of any capacity which provides 24-hour nonmedical care and supervision to children in a structured environment with such services provided at least in part by staff employed by the licensee.

(c) This section shall not apply to family homes certified by foster family agencies, foster family homes, and small family homes. It is not the intent of the Legislature that this section be applied in a discriminatory manner.

(d) If Senate Concurrent Resolution 27, of the 1997–98 Regular Session, is chaptered, the department may request the voluntary assistance of the Care Facilities Task Force to develop a plan for creating a toll-free "800" number as required by subdivision (a). If the Care Facilities Task Force submits a report containing recommendations regarding a toll-free "800" number that would materially satisfy the requirements of this section, the department may fulfill the requirements of this section by submitting a copy of the report to the Legislature, accompanied by any comments the department has regarding the recommendations.

(e) This section shall be repealed on January 1, 2001, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 4. Section 1538.7 is added to the Health and Safety Code, to read:

1538.7. (a) On or after July 1, 1998, the owner or licensee of a group home located in San Bernardino County that provides care to any number of persons shall provide written notice to any individual

who makes a verbal or written complaint to the group home owner, licensee, or operator, or who asks the owner, licensee, or operator how to make a complaint about the group home. The notice shall include all of the following:

(1) Notice of the procedure approved by the licensing agency for immediate response to incidents and complaints, in accordance with the provisions of Section 1524.6.

(2) Notice of the right of any person to request an inspection of the group home if a violation of the law regulating community care facilities is alleged, in accordance with the provisions of Section 1538.

(3) The following statement, in at least 14-point boldface type:

"NOTICE: The Department of Social Services will not conduct an inspection if the department determines that a complaint is willfully intended to harass a licensee or is without any reasonable basis. (Health and Safety Code Section 1538)."

(4) The telephone number of the Inland Empire Office-Residential of the State Department of Social Services.

(b) For purposes of this section, "group home" means any facility of any capacity which provides 24-hour nonmedical care and supervision to children in a structured environment with such services provided at least in part by staff employed by the licensee.

(c) This section shall not apply to family homes certified by foster family agencies, foster family homes, and small family homes. It is not the intent of the Legislature that this section be applied in a discriminatory manner.

(d) This section shall be repealed on January 1, 2001, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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CHAPTER 562

An act to add Sections 3332.1 and 4051.1 to the Food and Agricultural Code, and to add Section 25909 to the Government Code, relating to fairs.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 3332.1 is added to the Food and Agricultural Code, to read:

3332.1. Notwithstanding any other provision of law and in accordance with procedures established by the board, the board may enter into agreements to secure donations, memberships, and corporate and individual sponsorships, and may enter into marketing and licensing agreements for the receipt of money, or services or products in lieu of money, and may employ or enter into an agreement with an entity or person to develop, solicit, sell, and service these agreements. The compensation for the entity or person shall be established by the board.

SEC. 2. Section 4051.1 is added to the Food and Agricultural Code, to read:

4051.1. Notwithstanding any other provision of law and in accordance with procedures established by the board, the board may enter into agreements to secure donations, memberships, and corporate and individual sponsorships, and may enter into marketing and licensing agreements for the receipt of money, or services or products in lieu of money, and may employ or enter into an agreement with an entity or person to develop, solicit, sell, and service these agreements. The compensation for the entity or person shall be established by the board.

SEC. 3. Section 25909 is added to the Government Code, to read:

25909. Notwithstanding any other provision of law and in accordance with procedures established by the board of directors, the board of directors of a fair that is operated pursuant to this article may enter into agreements to secure donations, memberships, and corporate and individual sponsorships, and may enter into marketing and licensing agreements for the receipt of money, or services or products in lieu of money, and may employ or enter into an agreement with an entity or person to develop, solicit, sell, and service these agreements. The compensation for the entity or person shall be established by the board of directors.

CHAPTER 563

An act to amend Sections 10500, 10504, and 10505 of, and to add Section 10504.5 to, the Public Contract Code, relating to the University of California.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 10500 of the Public Contract Code is amended to read:

10500. As used in this article, "project" includes the erection, construction, alteration, repair, or improvement of any University of California structure, building, road, or other improvement that will exceed in cost, including labor and materials, a total of fifty thousand dollars ($50,000).

SEC. 2. Section 10504 of the Public Contract Code is amended to read:

10504. Except as otherwise provided in Section 10504.5 or 10506, work on all projects shall be performed under contract awarded in accordance with Section 10501, except that it may be done on a time and materials basis, by contract upon informal bids, by University of California employees, by day labor under the direction of the regents, or by a combination thereof, in case of emergency due to an act of God, earthquake, flood, storm, fire, landslide, public disturbance, vandalism, or failure that causes damage to a university-owned building or structure, university-owned real property, or any improvements thereon, when that work or those remedial measures are required immediately and are necessary to protect the public health, safety, and welfare.

SEC. 3. Section 10504.5 is added to the Public Contract Code, to read:

10504.5. Where the nature of the work, in the opinion of the regents, is such that the application of all of the provisions of this chapter in connection with that work is not required, and the cost of the project does not exceed one hundred thousand dollars ($100,000), the regents shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids.

SEC. 4. Section 10505 of the Public Contract Code is amended to read:

10505. (a) The Regents of the University of California may perform projects with university employees if the regents deem that the award of a contract, the acceptance of bids, or the acceptance of further bids is not in the best interests of the university, under either of the following circumstances:

(1) The value of the project to be so performed shall not exceed fifty thousand dollars ($50,000).

(2) The project is for the erection, construction, alteration, repair, or improvement of experimental, diagnostic, or specialized research equipment.

(b) This section does not apply to the painting or repainting of a structure, building, road, or improvement of any kind if the value of the painting or repainting project exceeds twenty-five thousand dollars ($25,000).

CHAPTER 564

An act to amend Sections 23817.5, 23817.7, 23817.8, and 23820 of, and to add Sections 23817.4, 23817.9, and 23817.10 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 23817.4 is added to the Business and Professions Code, to read:

23817.4. The Legislature finds and declares that the public welfare and morals require that there be a limitation on the number of premises licensed for the off sale of beer and wine.

SEC. 2. Section 23817.5 of the Business and Professions Code is amended to read:

23817.5. (a) (1) The number of premises for which an off-sale beer and wine license is issued shall be limited to one for each 2,500, or fraction thereof, inhabitants of the city or county in which the premises are situated. No additional off-sale beer and wine license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any city or county where the number of premises for which all off-sale beer and wine licenses are issued is more than one for each 2,500, or fraction thereof, inhabitants of the city or county.

(2) The number of premises for which an off-sale beer and wine license is issued in a city and county, in combination with the number of premises for which an off-sale general license is issued in a city and county, shall be limited to one for each 1,250, or fraction thereof, inhabitants of the city and county in which the premises are situated. No additional off-sale beer and wine license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any city or county where the number of premises for which all off-sale beer and wine licenses in combination with off-sale general licenses are

issued is more than one for each 1,250, or fraction thereof, inhabitants of the city and county.

(b) Notwithstanding subdivision (a), a retail off-sale beer and wine replacement license shall be issued upon application when all of the following conditions exist:

(1) The replacement license is only for use at a premises which was licensed within the past 12 months.

(2) The prior licensee abandoned the premises or the original license is subject to a bankruptcy proceeding and the prior licensee has no right to operate at that location. For purposes of this paragraph, "abandoned" means that the prior licensee is not exercising dominion or control over the premises.

(3) An applicant for a replacement license shall accompany the application with a fee of one hundred dollars ($100).

(c) The following limitations shall apply to the issuance of a replacement license:

(1) The replacement license shall not be transferred to another premises.

(2) All conditions imposed on the original license shall apply to the replacement license.

(3) The original license shall not be transferred subsequent to the issuance of the replacement license.

SEC. 3. Section 23817.7 of the Business and Professions Code is amended to read:

23817.7. (a) Notwithstanding Section 23817.5, the department may approve an application for an off-sale beer and wine license in areas covered by Section 23817.5, if the applicant shows that public convenience or necessity would be served by the issuance, and where all of the following conditions are found to exist:

(1) The applicant premises are located in a crime reporting district that is below that specified pursuant to paragraph (1) of subdivision (a) of Section 23958.4.

(2) The applicant premises are located in an area that falls below the concentration level provided in paragraph (3) of subdivision (a) of Section 23958.4.

(3) The local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines that public convenience or necessity would be served by the issuance.

(b) The department may impose reasonable conditions on a licensee as may be needed in the interest of the public health, safety, and welfare regarding signing, training for responsible beverage sales and hours, and mode of sale.

SEC. 4. Section 23817.8 of the Business and Professions Code is amended to read:

23817.8. (a) Notwithstanding Section 23817.5, the department may approve an application for an off-sale beer and wine license by a licensed beer and wine wholesaler, even though the applicant

premises will be located in an area having an undue concentration of off-sale beer and wine licenses, as provided in paragraph (3) of subdivision (a) of Section 23958.4, provided each of the following conditions are met:

(1) The off-sale beer and wine license shall be held at the same location as the beer and wine wholesaler license.

(2) The off-sale beer and wine license shall be restricted to sales solicited and accepted by direct mail, telephone, or on-line computer. The off-sale beer and wine license shall not be used for operations conducted from a retail store open to the public.

(b) The department may impose reasonable conditions on a licensee as may be needed in the interest of the public health, safety, and welfare regarding signing, training for responsible beverage sales, hours, and mode of sale.

SEC. 5. Section 23817.9 is added to the Business and Professions Code, to read:

23817.9. For the purposes of Section 23817.5, beginning with the year 2000, population shall be determined by the most recent United States decennial census or a single subsequent census between United States decennial censuses validated by the Population Research Unit of the Department of Finance five years after a United States decennial census.

SEC. 6. Section 23817.10 is added to the Business and Professions Code, to read:

23817.10. Whenever it is made to appear to the department by satisfactory evidence that the population in any city or county has increased by more than 2,500 or multiples of 2,500 inhabitants or the population in a city and county has increased by more than 1,250 or multiples of 1,250 inhabitants since the most recent United States decennial census and if the total number of off-sale beer and wine licenses in that city, county, or city and county does not then exceed the maximum specified in Section 23817.5, the department may issue additional licenses, not to exceed one off-sale beer and wine license for each increase of 2,500 inhabitants in the city or county or for each increase of 1,250 inhabitants in the city and county since the taking of the census.

SEC. 7. Section 23820 of the Business and Professions Code is amended to read:

23820. The department may make all rules consistent with the provisions of Section 22 of Article XX of the Constitution, or the provisions of this division, necessary to carry into effect the provisions of this article, and to restrict the issuance of alcoholic beverage licenses, including seasonal licenses, but not including beer, beer and wine wholesaler's, and winegrower's licenses, to a number in any county as the department shall determine is in the interest of public welfare and morals, convenience, or necessity.

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CHAPTER 565

An act to amend Sections 33080.1, 33349, and 33437 of, and to add Sections 33437.5 and 33763.5 to, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 33080.1 of the Health and Safety Code is amended to read:

33080.1. Every redevelopment agency shall present an annual report to its legislative body within six months of the end of the agency's fiscal year. The annual report shall contain all of the following:

(a) (1) An independent financial audit report for the previous fiscal year. "Audit report" means an examination of, and opinion on, the financial statements of the agency which present the results of the operations and financial position of the agency, including all financial activities with moneys required to be held in a separate Low and Moderate Income Housing Fund pursuant to Section 33334.3, and including an opinion with respect to the accuracy of the statement of the information contained in the resolution adopted pursuant to Section 33682 and the existence of other funds to make the payments required by Section 33681. This audit shall be conducted in accordance with generally accepted auditing standards and the rules governing audit reports promulgated by the State Board of Accountancy. The audit report shall also include an opinion of the agency's compliance with laws, regulations, and administrative requirements governing activities of the agency.

(2) However, the legislative body may elect to omit from inclusion in the audit report any distinct activity of the agency that is funded exclusively by the federal government and that is subject to audit by the federal government.

(b) A fiscal statement for the previous fiscal year that contains the information required pursuant to Section 33080.5.

(c) A description of the agency's activities in the previous fiscal year affecting housing and displacement that contains the information required by Sections 33080.4 and 33080.7.

(d) A description of the agency's progress, including specific actions and expenditures, in alleviating blight in the previous fiscal year.

(e) A list of, and status report on, all loans made by the redevelopment agency that are fifty thousand dollars ($50,000) or more, that in the previous fiscal year were in default, or not in

compliance with the terms of the loan approved by the redevelopment agency.

(f) A description of the total number and nature of the properties that the agency owns and those properties the agency has acquired in the previous fiscal year.

(g) Any other information that the agency believes useful to explain its programs, including, but not limited to, the number of jobs created and lost in the previous fiscal year as a result of its activities.

SEC. 2. Section 33349 of the Health and Safety Code is amended to read:

33349. (a) The agency shall publish notice of the hearing not less than once a week for four successive weeks prior to the hearing. The notice shall be published in a newspaper of general circulation, printed and published in the community, or if there is none, in a newspaper selected by the agency. The notice of hearing shall include a legible map of the boundaries of the area or areas designated in the proposed redevelopment plan and a general statement of the scope and objectives of the plan in nontechnical language and in a clear and coherent manner using words with common and everyday meaning.

The agency shall prepare a legal description of the boundaries of the area or areas designated in the proposed redevelopment plan and make this legal description available to the public for inspection during the agency's normal business hours. The notice of the hearing shall state that a copy of the legal description of the boundaries is available upon request, free of charge.

(b) Copies of the notices published pursuant to this section shall be mailed, by first-class mail, to the last known assessee of each parcel of land in the area designated in the redevelopment plan, at his or her last known address as shown on the last equalized assessment roll of the county; or where a city assesses, levies, and collects its own taxes, as shown on the last equalized assessment roll of the city; or to the owner of each parcel of land within the boundaries of the area or areas designated in the proposed redevelopment plan, as shown on the records of the county recorder 30 days prior to the date the notice is published.

(c) (1) Notice shall also be provided, by first-class mail, to all residents and businesses within the project area at least 30 days prior to the hearing.

(2) The mailed notice requirement of this subdivision shall only apply when mailing addresses to all individuals and businesses, or to all occupants, are obtainable by the agency at a reasonable cost. The notice shall be mailed by first-class mail, but may be addressed to "occupant." If the agency has acted in good faith to comply with the notice requirements of this subdivision, the failure of the agency to provide the required notice to residents or businesses unknown to the agency or whose addresses cannot be obtained at a reasonable

cost, shall not, in and of itself, invalidate a redevelopment plan or amendment to a redevelopment plan.

(d) Copies of the notices published pursuant to this section shall also be mailed to the governing body of each of the taxing agencies that levies taxes upon any property in the project area designated in the proposed redevelopment plan. Notices sent pursuant to this subdivision shall be mailed by certified mail, return receipt requested.

SEC. 3. Section 33437 of the Health and Safety Code is amended to read:

33437. An agency shall obligate lessees or purchasers of property acquired in a redevelopment project to:

(a) Use the property for the purpose designated in the redevelopment plans.

(b) Begin the redevelopment of the project area within a period of time which the agency fixes as reasonable.

(c) Comply with the covenants, conditions, or restrictions that the agency deems necessary to prevent speculation or excess profittaking in undeveloped land, including right of reverter to the agency. Covenants, conditions, and restrictions imposed by an agency may provide for the reasonable protection of lenders.

(d) Comply with other conditions which the agency deems necessary to carry out the purposes of this part.

SEC. 4. Section 33437.5 is added to the Health and Safety Code, to read:

33437.5. It is the intent of the Legislature that property acquired from a redevelopment agency pursuant to a redevelopment plan not be the subject of real estate speculation.

SEC. 5. Section 33763.5 is added to the Health and Safety Code, to read:

33763.5. All loans made by a redevelopment agency shall be made according to a regulation that contains standards, qualifications, and criteria for the making and approval of loans and that has been adopted by the redevelopment agency at a public meeting.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

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CHAPTER 566

An act to amend Sections 11454, 13459.5, 74224, and 78645 of, and to add Section 36560 to, the Water Code, to amend Section 4 of Chapter 1428 of the Statutes of 1985, and to add Section 32.5 to the Water Conservation Act of 1927 (Chapter 91 of the Statutes of 1927), relating to water, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 11454 of the Water Code is amended to read:

11454. Under such regulations and upon such terms, limitations, and conditions as it prescribes, the department may do any of the following:

(a) Fix and establish the prices, rates, and charges at which the resources and facilities made available by the project shall be sold and disposed of.

(b) (1) Enter into contracts and agreements and do any and all things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this part.

(2) The contracts and agreements may include provisions for the indemnification of parties with whom the department contracts as necessary to accomplish the purposes and objects of this part, except that the contracts and agreements may not include provisions for the indemnification, including indemnification for any costs of defense, of any party to those contracts or agreements for that party's acts or omissions involving negligence, gross negligence, recklessness, or willful misconduct or for acts or omissions involving negligence, gross negligence, recklessness, or willful misconduct on the part of that party's employees, agents, or contractors.

(3) The Legislature finds and declares that the amendments made to this subdivision during the 1997 portion of the 1997–98 Regular Session are declaratory of existing law.

SEC. 2. Section 13459.5 of the Water Code is amended to read:

13459.5. Unallocated money remaining in the Agricultural Drainage Water Account in the 1986 Water Conservation and Water Quality Bond Fund on November 6, 1996, and any unallocated money deposited into that account from the sale of any bonds that are sold after November 6, 1996, shall be transferred to the Drainage Management Subaccount, created by Section 78641, of the Clean Water and Water Recycling Account in the Safe, Clean, Reliable Water Supply Fund for the purposes of subdivision (b) of Section 78645. For the purpose of this section, "unallocated money" means money not committed or appropriated as of November 6, 1996, which

is not less than six million one hundred seventy-seven thousand dollars ($6,177,000).

SEC. 3. Section 36560 is added to the Water Code, to read:

36560. Assessments that are imposed pursuant to this part and Part 7.5 (commencing with Section 37200) to pay the principal of, and interest on, general obligation bonds of a district or which are issued by a district for an improvement district are ad valorem taxes that are imposed in accordance with subdivision (b) of Section 1 of Article XIII A of the California Constitution and are not, therefore, subject to the procedures and approval process of Article XIII D of the California Constitution. This section shall not be construed as declaring that any other type of assessment is either exempt from, or subject to, the procedures and approval process of Article XIII D of the California Constitution.

SEC. 4. Section 74224 of the Water Code is amended to read:

74224. Notwithstanding Section 74223, the board may, by resolution, change the day and location for holding regular meetings. Notice of any change shall be published once a week for at least two consecutive weeks before the date for a regular meeting in a newspaper of general circulation circulated in the district.

SEC. 5. Section 78645 of the Water Code is amended to read:

78645. (a) Any unallocated money remaining in the Agricultural Drainage Water Account in the 1986 Water Conservation and Water Quality Bond Fund on November 6, 1996, and any unallocated money deposited into that account from the sale of any bonds that are sold after November 6, 1996, shall be transferred to the subaccount. For the purpose of this section "unallocated money" means money not committed or appropriated as of November 6, 1996, which is not less than six million one hundred seventy-seven thousand dollars ($6,177,000).

(b) Notwithstanding Section 13340 of the Government Code, any funds that are transferred pursuant to subdivision (a) to the subaccount are hereby continuously appropriated, without regard to fiscal years, to the Department of Food and Agriculture for programs to develop methods of using drainage water and reducing toxic materials in drainage water through reuse of the water and the use of the remaining salts. Priority shall be given to source reduction projects and programs.

SEC. 6. Section 32.5 is added to the Water Conservation Act of 1927 (Chapter 91 of the Statutes of 1927), to read:

Sec. 32.5. As an alternative to the functions of the county treasurer and the county auditor provided in this act, the board may elect to disburse funds of the district. The election shall be made by resolution of the board and the filing of a certified copy thereof with the county treasurer. The county treasurer shall thereupon deliver to the district all funds of the district. The funds shall be deposited by the board in a bank or banks approved for deposit of public funds and shall be withdrawn only by written order of the board, signed by the

president and secretary. The order shall specify the name of the payee and the fund from which it is to be paid and shall state generally the purpose for which payment is to be made. The order shall be entered in the minutes of the board. The board shall appoint a treasurer who shall be responsible for the deposit and withdrawal of the funds of the district. The treasurer shall deposit with the district, prior to October 1 of each year, a surety bond in an amount annually fixed by the board. The deposit and withdrawal of funds of the district shall thereafter be subject to the provisions of Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code. Any district electing to disburse funds pursuant to this section shall file with the board of supervisors an annual audit of those disbursements that meets the approval of the board of supervisors.

SEC. 7. Section 4 of Chapter 1428 of the Statutes of 1985 is amended to read:

Sec. 4. (a) Upon installation of the carbon adsorption water treatment systems funded in subdivision (b) of Section 3 of this act, the Department of Toxic Substances Control shall establish, pursuant to Section 25330.5 of the Health and Safety Code, a subaccount for site operation and maintenance for remedial measures affecting the San Gabriel Valley Superfund site, and shall deposit in the subaccount sufficient funds to cover the costs of operation and maintenance of the carbon adsorption water treatment systems at the Richwood, Hemlock, and Rurban Homes Mutual Water Companies for 20 years. The Department of Toxic Substances Control may expend funds from the subaccount established pursuant to this section only to the extent that federal funds for operation and maintenance are not available pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.). The funds shall be allocated from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund.

(b) The Department of Toxic Substances Control shall determine whether it is more economical to provide Richwood residents with a substitute source of water supply than to maintain, operate, or repair a treatment system. Notwithstanding any other provision of this act, if the department determines that a substitute source of water supply is more economical, funds appropriated pursuant to subdivision (b) of Section 3 of this act, less the amount, if any, that the department determines it is required to reimburse the Environmental Protection Agency for the cost of the installation of the water treatment system, may be expended to provide Richwood residents with a substitute source of water supply. The substitute source of water supply shall only be provided by a public water system whose service to the customers of the Richwood Mutual Water Company has been expressly approved by the district engineer of the State Department of Health Services, Drinking Water Field Operations Branch, for the district in which the

Richwood Mutual Water Company and the prospective supplier are located. If the Department of Toxic Substances Control expends funds on a substitute source of water supply, no additional funds for the operation and maintenance of the water treatment system at the Richwood Mutual Water Company shall be deposited into the subaccount pursuant to subdivision (a). This subdivision shall not be construed to require the Department of Toxic Substances Control to actually reimburse the Environmental Protection Agency for its share of the cost of the design, purchase, and installation of the water treatment system prior to expending funds to provide Richwood residents with a substitute source of water supply.

SEC. 8. (a) Pursuant to subdivision (a) of Section 12879.4, and Sections 13458 and 13999.11, of the Water Code, the Department of Water Resources may make loans from the 1988 Water Conservation Fund, the Water Conservation and Groundwater Recharge Account in the 1986 Water Conservation and Water Quality Bond Fund, and the Water Conservation Account in the 1984 State Clean Water Bond Fund, in accordance with the Water Conservation Bond Law of 1988 (Chapter 4.7 (commencing with Section 12879) of Part 6 of Division 6 of the Water Code), the Water Conservation and Water Quality Bond Law of 1986 (Chapter 6.1 (commencing with Section 13450) of Division 7 of the Water Code), and the Clean Water Bond Law of 1984 (Chapter 15 (commencing with Section 13999) of Division 7 of the Water Code) to the following agencies for the following purposes:

(1) Water conservation projects:

(A) Lake Hemet Municipal Water District pipeline and tank replacement project in Riverside County.

(B) Eastern Municipal Water District water pipeline replacement project in Riverside County.

(C) Eastern Municipal Water District water tank and supply pipeline replacement project in Riverside County.

(D) City of Jackson pipeline project in Amador County.

(E) Stinson Beach County Water District water tank replacement project in Marin County.

(2) Groundwater recharge projects:

(A) Water Replenishment District of Southern California groundwater recharge project in the Los Angeles Forebay in Los Angeles County.

(B) Water Replenishment District of Southern California groundwater recharge project in the Montebello Forebay in Los Angeles County.

(3) Feasibility study:

(A) Water Replenishment District of Southern California groundwater recharge feasibility study in southern Los Angeles County.

(b) The Department of Water Resources shall determine eligibility for, and the amount of, any loan authorized by subdivision (a) in accordance with the Water Conservation Bond Law of 1988

(Chapter 4.7 (commencing with Section 12879) of Part 6 of Division 6 of the Water Code), the Water Conservation and Water Quality Bond Law of 1986 (Chapter 6.1 (commencing with Section 13450) of Division 7 of the Water Code), and the Clean Water Bond Law of 1984 (Chapter 15 (commencing with Section 13999) of Division 7 of the Water Code), and may make those loans in accordance with those bond laws.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to remedy critical water quality and supply problems, thereby protecting the public health and safety, and, as soon as possible, to allow water conservation districts to hold regular meetings at various locations to eliminate uncertainty as to the applicability of Article XIII D of the California Constitution to assessments that are levied by California water districts to pay debt service on general obligation bonds, to eliminate grave threats to public health and safety faced by residents of the San Gabriel Basin due to a contaminated water supply and inadequate water distribution systems, to grant certain authority to the boards of districts that are subject to the Water Conservation Act of 1927, to make a change in a provision relating to the transfer of bond proceeds from the Agricultural Drainage Water Account in the 1986 Water Conservation and Water Quality Bond Fund to the Drainage Management Subaccount of the Clean Water and Water Recycling Account in the Safe, Clean, Reliable Water Supply Fund, and to authorize the Department of Water Resources to include prescribed indemnification provisions in contracts and agreements relating to the State Water Project, it is necessary that this act take effect immediately.

CHAPTER 567

An act to amend Section 2081 of, and to add Sections 2052.1 and 2081.1 to, the Fish and Game Code, relating to endangered species.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 2052.1 is added to the Fish and Game Code, to read:

2052.1. The Legislature further finds and declares that if any provision of this chapter requires a person to provide mitigation measures or alternatives to address a particular impact on a

candidate species, threatened species, or endangered species, the measures or alternatives required shall be roughly proportional in extent to any impact on those species that is caused by that person. Where various measures or alternatives are available to meet this obligation, the measures or alternatives required shall maintain the person's objectives to the greatest extent possible consistent with this section. All required measures alternatives shall be capable of successful implementation. This section governs the full extent of mitigation measures or alternatives that may be imposed on a person pursuant to this chapter. This section shall not affect the state's obligations set forth in Section 2052.

SEC. 2. Section 2081 of the Fish and Game Code is amended to read:

2081. The department may authorize acts that are otherwise prohibited pursuant to Section 2080, as follows:

(a) Through permits or memorandums of understanding, the department may authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions, to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes.

(b) The department may authorize, by permit, the take of endangered species, threatened species, and candidate species if all of the following conditions are met:

(1) The take is incidental to an otherwise lawful activity.

(2) The impacts of the authorized take shall be minimized and fully mitigated. The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking.

(3) The permit is consistent with any regulations adopted pursuant to Sections 2112 and 2114.

(4) The applicant shall ensure adequate funding to implement the measures required by paragraph (2), and for monitoring compliance with, and effectiveness of, those measures.

(c) No permit may be issued pursuant to subdivision (b) if issuance of the permit would jeopardize the continued existence of the species. The department shall make this determination based on the best scientific and other information that is reasonably available, and shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities.

(d) The department shall adopt regulations to aid in the implementation of subdivision (b) and the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, with respect to authorization of take. The department may seek certification pursuant to Section 21080.5 of the Public Resources Code to implement subdivision (b).

SEC. 3. Section 2081.1 is added to the Fish and Game Code, to read:

2081.1. Nothing in this chapter or in any other provision of law prohibits the taking or the incidental taking of any endangered, threatened, or candidate species if the taking was authorized by the department through a permit or memorandum of understanding, or in a natural communities conservation plan, habitat conservation plan, habitat management plan, or other plan or agreement approved by or entered into by the department, or in an amendment to such a permit, memorandum of understanding, plan, or agreement and all of the following conditions are met:

(a) The application process commenced on or before April 10, 1997.

(b) The department approved the permit, memorandum of understanding, plan, agreement, or amendment thereto within either of the following timeframes:

(A) On or before April 10, 1997.

(B) Between April 10, 1997, and January 1, 1998, and the department also certifies that the permit, memorandum of understanding, plan, agreement, or amendment thereto meets the substantive criteria of subdivision (b) of Section 2081.

The permits, memoranda of understanding, plan, agreements, and amendments thereto described in this section are deemed to be in full force and effect, as of the date approved or entered into by the parties insofar as they authorize the take of species. This section does not apply to the "Emergency Management Measures Permit" issued by the department on March 15, 1995.

SEC. 4. It is the intent of the Legislature that the "management" provision of subdivision (a) of Section 2081 of the Fish and Game Code not be used to authorize the take of candidate, threatened, or endangered species incidental to otherwise lawful activities.

It is the intent of the Legislature that the term "memorandum of understanding," as used in Sections 2081.5, 2110, and 2112, means "permit" for purposes of subdivision (b) of Section 2081.

CHAPTER 568

An act to amend Section 41712 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 1997. Filed with
Secretary of State September 29, 1997.]

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

SECTION 1. Section 41712 of the Health and Safety Code is amended to read:

41712. (a) For purposes of this section, the following terms have the following meaning:

(1) "Consumer product" means a chemically formulated product used by household and institutional consumers, including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings.

(2) "Health benefit product" means an antimicrobial product registered with the Environmental Protection Agency.

(3) "Maximum feasible reduction in volatile organic compounds emitted" means at least a 60-percent reduction in the emissions of volatile organic compounds resulting from the use of aerosol paints, calculated with respect to the 1989 baseline year, including acetone in that baseline year.

(4) "Medical expert" means a physician, including a pediatrician, a microbiologist, or a scientist involved in research related to infectious disease and infection control.

(b) The state board shall adopt regulations to achieve the maximum feasible reduction in volatile organic compounds emitted by consumer products, if the state board determines that adequate data exists to establish both of the following:

(1) The regulations are necessary to attain state and federal ambient air quality standards.

(2) The regulations are commercially and technologically feasible and necessary.

(c) A regulation shall not be adopted that requires the elimination of a product form.

(d) The state board shall not adopt regulations pursuant to subdivision (b) unless the regulations are technologically and commercially feasible, and necessary to carry out this division. The state board shall consider the effect that the regulations proposed for health benefit products will have on the efficacy of those products in killing or inactivating agents of infectious diseases such as viruses, bacteria, and fungi, and the impact the regulations will have on the availability of health benefit products to California consumers.

(e) (1) Prior to adopting regulations pursuant to this section governing health benefit products, including, but not limited to, disinfectants, the state board shall consider any recommendations

received from federal, state, or local public health agencies and medical experts in the field of public health.

(2) Within 30 days from the date of the adoption of any regulation pursuant to this section governing health benefit products, the state board shall prepare and submit to the Legislature and the Governor a report which summarizes any recommendations received pursuant to paragraph (1) and any conclusions made by the state board concerning the recommendations.

(f) A district shall adopt no regulation relating to a consumer product that is different than any regulation adopted by the state board for that purpose.

(g) A consumer product manufactured prior to each effective date specified in regulations adopted by the state board pursuant to this section that applies to that consumer product may be sold, supplied, or offered for sale for a period of three years from the specified effective date if the date of manufacture or a representative date code is clearly displayed on the product at the point of sale. An explanation of the date code shall be filed with the state board.

(h) (1) It is the intent of the Legislature that, prior to January 1, 2000, air pollution control standards affecting the formulation of aerosol adhesives and limiting emissions of reactive organic compounds resulting from the use of aerosol adhesives be set solely by the state board to ensure uniform standards applicable on a statewide basis.

(2) The Legislature recognizes that the current state board volatile organic compound (VOC) limit for aerosol adhesives is 75 percent by weight. Effective January 1, 1997, the state board's 75-percent standard shall apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses, and any district regulations limiting the VOC content of, or emissions from, aerosol adhesives, are null and void. After that date, a district may adopt and enforce the state board's 75-percent standard for aerosol adhesives, or a subsequently adopted state board standard, in the same manner as a district regulation limiting the issuance of air contaminants.

(3) On or before July 1, 2000, the state board shall prepare a study and conduct a public hearing on the need for, and the feasibility of, establishing a more stringent standard or standards for aerosol adhesives. If the state board finds that more stringent limits for aerosol adhesives are expected to become feasible, the state board shall, at that time, adopt a standard or standards to implement more stringent VOC limits. At a minimum, the state board shall establish standards pursuant to this paragraph that constitute best available retrofit control technology, as defined in Section 40406, and that implement all plans adopted pursuant to Chapter 10 (commencing with Section 40910) of Part 3 unless the state board determines that those measures are not achievable.

(4) Notwithstanding any other provision of this section, on and after January 1, 2000, a district may adopt and enforce a regulation

setting an emission standard or standards for VOC emissions for the use of aerosol adhesives that is more stringent than the standards adopted by the state board.

(i) (1) It is the intent of the Legislature that air pollution control standards affecting the formulation of aerosol paints and limiting the emissions of volatile organic compounds resulting from the use of aerosol paints be set solely by the state board to ensure uniform standards applicable on a statewide basis. A district shall not adopt or enforce any regulation regarding the volatile organic compound content of, or emissions from, aerosol paints until such time as the state board has adopted a regulation regarding those paints, and any district regulation shall not be different than the state board regulation. A district may observe and enforce a state board regulation regarding aerosol paints in the same manner as a district regulation limiting the issuance of air contaminants. This subdivision shall not apply to any district that has adopted a rule or regulation regarding aerosol paints pursuant to an order of a federal court, until such time as the federal court has authorized the district to observe and enforce the state board regulation in lieu of the district regulation.

(2) On or before January 1, 1995, the state board shall adopt regulations requiring the maximum feasible reduction in volatile organic compounds emitted from the use of aerosol paints. The regulations shall establish final limits and require full compliance not later than December 31, 1999, and shall establish interim limits prior to that date resulting in reductions in reactive organic compounds.

(3) On or before December 31, 1998, the state board shall conduct a public hearing on the technological or commercial feasibility of achieving full compliance with the final limits by December 31, 1999. If the state board determines that a 60-percent reduction in emissions of reactive organic compounds from the use of aerosol paints is not technologically or commercially feasible by December 31, 1999, it may grant an extension of time not to exceed five years. During any such extension of time, the most stringent interim limits shall be applicable. Any regulation adopted by the state board shall include a provision authorizing the time extension and requiring a public hearing on technological or commercial feasibility consistent with this subdivision. The state board shall seek to ensure that the final limits for aerosol paints established pursuant to this subdivision do not become federally enforceable prior to the effective date established by the state board for these limits, including any extension granted under this subdivision.

(4) Reductions required for aerosol paints under this subdivision are not intended to apply to any other consumer product.

SEC. 2. Section 41712 of the Health and Safety Code is amended to read:

41712. (a) For purposes of this section, the following terms have the following meaning:

(1) "Consumer product" means a chemically formulated product used by household and institutional consumers, including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings.

(2) "Health benefit product" means an antimicrobial product registered with the Environmental Protection Agency.

(3) "Maximum feasible reduction in volatile organic compounds emitted" means at least a 60-percent reduction in the emissions of volatile organic compounds resulting from the use of aerosol paints, calculated with respect to the 1989 baseline year, including acetone in that baseline year.

(4) "Medical expert" means a physician, including a pediatrician, a microbiologist, or a scientist involved in research related to infectious disease and infection control.

(b) The state board shall adopt regulations to achieve the maximum feasible reduction in volatile organic compounds emitted by consumer products, if the state board determines that adequate data exists to establish both of the following:

(1) The regulations are necessary to attain state and federal ambient air quality standards.

(2) The regulations are commercially and technologically feasible and necessary.

(c) A regulation shall not be adopted which requires the elimination of a product form.

(d) The state board shall not adopt regulations pursuant to subdivision (b) unless the regulations are technologically and commercially feasible, and necessary to carry out this division. The state board shall consider the effect that the regulations proposed for health benefit products will have on the efficacy of those products in killing or inactivating agents of infectious diseases such as viruses, bacteria, and fungi, and the impact the regulations will have on the availability of health benefit products to California consumers.

(e) (1) Prior to adopting regulations pursuant to this section governing health benefit products, the state board shall consider any recommendations received from federal, state, or local public health agencies and medical experts in the field of public health.

(2) Within 30 days from the date of the adoption of any regulation pursuant to this section governing health benefit products, the state board shall prepare and submit to the Legislature and the Governor a report that summarizes any recommendations received pursuant to paragraph (1) and any conclusions made by the state board concerning the recommendations.

(f) A district shall adopt no regulation pertaining to disinfectants, nor any regulation pertaining to a consumer product that is different than any regulation adopted by the state board for that purpose.

(g) A consumer product manufactured prior to each effective date specified in regulations adopted by the state board pursuant to this section that applies to that consumer product may be sold, supplied, or offered for sale for a period of three years from the specified effective date if the date of manufacture or a representative date code is clearly displayed on the product at the point of sale. An explanation of the date code shall be filed with the state board.

(h) (1) It is the intent of the Legislature that, prior to January 1, 2000, air pollution control standards affecting the formulation of aerosol adhesives and limiting emissions of reactive organic compounds resulting from the use of aerosol adhesives be set solely by the state board to ensure uniform standards applicable on a statewide basis.

(2) The Legislature recognizes that the current state board volatile organic compound (VOC) limit for aerosol adhesives is 75 percent by weight. Effective January 1, 1997, the state board's 75-percent standard shall apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses, and any district regulations limiting the VOC content of, or emissions from, aerosol adhesives, are null and void. After that date, a district may adopt and enforce the state board's 75-percent standard for aerosol adhesives, or a subsequently adopted state board standard, in the same manner as a district regulation limiting the issuance of air contaminants.

(3) On or before July 1, 2000, the state board shall prepare a study and conduct a public hearing on the need for, and the feasibility of, establishing a more stringent standard or standards for aerosol adhesives. If the state board finds that more stringent limits for aerosol adhesives are expected to become feasible, the state board shall, at that time, adopt a standard or standards to implement more stringent VOC limits. At a minimum, the state board shall establish standards pursuant to this paragraph that constitute best available retrofit control technology, as defined in Section 40406, and implement all plans adopted pursuant to Chapter 10 (commencing with Section 40910) of Part 3 unless the state board determines that those measures are not achievable.

(4) Notwithstanding any other provision of this section, on and after January 1, 2000, a district may adopt and enforce a regulation setting an emission standard or standards for VOC emissions for the use of aerosol adhesives that is more stringent than the standards adopted by the state board.

(i) (1) It is the intent of the Legislature that air pollution control standards affecting the formulation of aerosol paints and limiting the emissions of volatile organic compounds resulting from the use of aerosol paints be set solely by the state board to ensure uniform standards applicable on a statewide basis. A district shall not adopt or enforce any regulation regarding the volatile organic compound content of, or emissions from, aerosol paints until such time as the state board has adopted a regulation regarding those paints, and any

district regulation shall not be different than the state board regulation. A district may observe and enforce a state board regulation regarding aerosol paints in the same manner as a district regulation limiting the issuance of air contaminants. This subdivision shall not apply to any district that has adopted a rule or regulation regarding aerosol paints pursuant to an order of a federal court, until such time as the federal court has authorized the district to observe and enforce the state board regulation in lieu of the district regulation.

(2) On or before January 1, 1995, the state board shall adopt regulations requiring the maximum feasible reduction in volatile organic compounds emitted from the use of aerosol paints. The regulations shall establish final limits and require full compliance not later than December 31, 1999, and shall establish interim limits prior to that date resulting in reductions in reactive organic compounds.

(3) On or before December 31, 1998, the state board shall conduct a public hearing on the technological or commercial feasibility of achieving full compliance with the final limits by December 31, 1999. If the state board determines that a 60-percent reduction in emissions of reactive organic compounds from the use of aerosol paints is not technologically or commercially feasible by December 31, 1999, the state board may grant an extension of time not to exceed five years. During any such extension of time, the most stringent interim limits shall be applicable. Any regulation adopted by the state board shall include a provision authorizing the time extension and requiring a public hearing on technological or commercial feasibility consistent with this subdivision. The state board shall seek to ensure that the final limits for aerosol paints established pursuant to this subdivision do not become federally enforceable prior to the effective date established by the state board for these limits, including any extension granted under this subdivision.

(4) Reductions required for aerosol paints under this subdivision are not intended to apply to any other consumer product.

(j) The state board shall not adopt a regulation pertaining to disinfectants any sooner than December 1, 2003.

(k) The state board shall comply with its volatile organic compound emission reduction obligations under the 1994 State Implementation Plan, or any amendments thereto, and shall ensure that there is no loss of emission reductions as a result of its compliance with subdivision (j).

SEC. 3. Section 2 of this bill incorporates amendments to Section 41712 of the Health and Safety Code proposed by both this bill and SB 230. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, (2) each bill amends Section 41712 of the Health and Safety Code, and (3) this bill is enacted after SB 230, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because 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 569

An act to amend Sections 23200 and 23202 of, to add Chapter 14.2 (commencing with Section 22820) to Part 13 of, and to repeal Section 22707 of, the Education Code, relating to school employees.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 22707 of the Education Code is repealed.

SEC. 2. Chapter 14.2 (commencing with Section 22820) is added to Part 13 of the Education Code, to read:

CHAPTER 14.2. OUT-OF-STATE SERVICE CREDIT

22820. (a) A member, other than a retired member, may elect to purchase out-of-state service credited in a public retirement system for service covering public education in another state or territory of the United States or by the United States for its citizens. In no event shall the member receive credit for this service if the member has credit or is eligible to receive credit for the same service in the Cash Balance Plan under Part 14 (commencing with Section 26000) or another public retirement system, excluding social security.

(b) The amount of out-of-state service for which a member may purchase credit may not exceed the number of years of service credited to the member in the out-of-state retirement system or 10 years, whichever is less.

(c) Out-of-state service credit may be purchased under this section by means of any of the following actions:

(1) Paying an amount equal to the amount refunded from the other public retirement system and receiving service credit in this plan pursuant to subdivision (a) of Section 22823.

(2) Paying the contributions required under this plan pursuant to subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(3) Paying an amount equal to the amount refunded from the other public retirement system and an additional amount in accordance with subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(d) Contributions made to a plan qualified under Section 403(b) of the Internal Revenue Code may not be used to purchase credit for out-of-state service.

(e) Compensation for out-of-state service shall not be used in determining the highest average annual compensation earnable when calculating final compensation.

(f) The credited service purchased under this section shall not be used to meet the eligibility requirements for benefits provided under Sections 23801, 23804, 23851, 23854, 24001, 24101, and 24201.

22821. A member's election to purchase out-of-state service credit shall be submitted in writing and shall include information as required by the board.

22822. An election pursuant to Section 22820 to purchase credit for out-of-state service may be made by a member any time prior to the effective date of a family, survivor, disability, or retirement allowance.

22823. (a) A member who elects to receive credit for out-of-state service as provided in this chapter shall contribute to the retirement fund the actuarial cost of the service, including interest as appropriate, as determined by the board based on the most recent valuation of the plan.

(b) (1) Any payment that a member may make to the system to obtain credit for out-of-state service shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member of the amount required to purchase out-of-state service prior to the effective date of the applicable allowance, the member may make payment in full within 30 days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for out-of-state service credit shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars ($25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

22824. No provision of this chapter shall apply to the extent it would require any action to be taken that would create a conflict with Section 415 of the Internal Revenue Code of 1968 (Title 26 of the United States Code).

22825. This chapter shall become operative on January 1, 1999.

SEC. 3. Section 23200 of the Education Code is amended to read:

23200. (a) If a person, whose accumulated retirement contributions have been refunded, again becomes a member of the plan, the person may elect to redeposit those contributions with regular interest from the date of refund to the date of payment. If the member elects to redeposit, the member shall repay all accumulated retirement contributions that were previously refunded.

(b) For time prior to July 1, 1944, regular interest shall be at $2\ ^1/_2$ percent compounded annually.

(c) If a nonmember spouse, as defined in Section 22651, withdraws accumulated contributions in accordance with Section 22661, the member may redeposit a sum equal to those contributions pursuant to subdivision (a), providing he or she is not receiving an allowance under Chapter 26 (commencing with Section 24100) or Chapter 27 (commencing with Section 24201).

SEC. 4. Section 23202 of the Education Code is amended to read:

23202. (a) An election pursuant to Section 23200 to redeposit accumulated retirement contributions may be made by a member anytime prior to the effective date of the member's retirement.

(b) An election to redeposit refunded accumulated retirement contributions shall be considered as an election to repay all accumulated retirement contributions previously refunded under the provision of this chapter.

(c) If any payment due because of this election is not received at the system's office in Sacramento within 120 days of its due date, the election shall be canceled. Upon the cancellation of election any payments made under the election shall be refunded.

(d) If the election is cancelled, the member may at any time prior to the effective date of retirement, again elect to redeposit accumulated retirement contributions previously withdrawn or refunded, in accordance with Section 23200 and all the laws, rules, and regulations pertaining thereto.

CHAPTER 570

An act to amend Section 1714.45 of the Civil Code, relating to product liability.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 29, 1997.]

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

SECTION 1. Section 1714.45 of the Civil Code is amended to read:

1714.45. (a) In a product liability action, a manufacturer or seller shall not be liable if both of the following apply:

(1) The product is inherently unsafe and the product is known to be unsafe by the ordinary consumer who consumes the product with the ordinary knowledge common to the community.

(2) The product is a common consumer product intended for personal consumption, such as sugar, castor oil, alcohol, and butter, as identified in comment i to Section 402A of the Restatement (Second) of Torts.

(b) This section does not exempt the manufacture or sale of tobacco products by tobacco manufacturers and their successors in interest from product liability actions, but does exempt the sale or distribution of tobacco products by any other person, including, but not limited to, retailers or distributors.

(c) For purposes of this section, the term "product liability action" means any action for injury or death caused by a product, except that the term does not include an action based on a manufacturing defect or breach of an express warranty.

(d) This section is intended to be declarative of and does not alter or amend existing California law, including Cronin v. J.B.E. Olson Corp., (1972) 8 Cal. 3d 121, and shall apply to all product liability actions pending on, or commenced after, January 1, 1988.

(e) This section does not apply to, and never applied to, an action brought by a public entity to recover the value of benefits provided to individuals injured by a tobacco-related illness caused by the tortious conduct of a tobacco company or its successor in interest, including, but not limited to, an action brought pursuant to Section 14124.71 of the Welfare and Institutions Code. In such an action brought by a public entity, the fact that the injured individual's claim against the defendant may be barred by a prior version of this section shall not be a defense. This subdivision does not constitute a change in, but is declaratory of, existing law relating to tobacco products.

(f) It is the intention of the Legislature in enacting the amendments to subdivisions (a) and (b) of this section adopted at the 1997–98 Regular Session to declare that there exists no statutory bar to tobacco-related personal injury, wrongful death, or other tort claims against tobacco manufacturers and their successors in interest by California smokers or others who have suffered or incurred injuries, damages, or costs arising from the promotion, marketing, sale, or consumption of tobacco products. It is also the intention of the Legislature to clarify that such claims which were or are brought shall be determined on their merits, without the imposition of any claim of statutory bar or categorical defense.

(g) This section shall not be construed to grant immunity to a tobacco industry research organization.

SEC. 2. The Legislature hereby finds and declares that to the extent that the common law rules as to product liability actions with respect to tobacco were superseded by the version of Section 1714.45

of the Civil Code added by Chapter 1498 of the Statutes of 1987, this act restores those common law rules with respect to the manufacture or sale of tobacco products by tobacco manufacturers and their successors in interest.

CHAPTER 571

An act to amend Section 1005 of, and to repeal and add Section 199.3 of, the Code of Civil Procedure, and to amend Sections 69601, 69892.1, 69911, 70046.2, 72602.14, 72608, 72609, 72702.5, 72769, 72778, 72782, 72784, 73077, 73084.3, 73084.4, 73084.5, 73089, 73096, 73096.1, 73348, 73350, 73433, 73433.1, 73433.4, 73434, 73435, 73436, 73436.1, 73436.2, 73483, 73487, 73683, 73684, 73691, 73692, 73699.1, 73705, 73710, 73713, 73766, 74344, 74604, 74607, 74610, 74642, 74643, 74663, 74665, 74745, 74803, 74805, 74807, 74808, and 74811, to repeal Sections 73367, 73368, 74644, 74644.3, and 74644.5 of, to add Article 12.2 (commencing with Section 73783.1) and Article 41 (commencing with Section 74993) to Chapter 10 of Title 8 of, and to repeal and add Sections 72776, 73353, 73757, 73759, and 74949.1 of, the Government Code, to amend Section 11205 of the Vehicle Code, and to amend Sections 1430 and 1440 of the Welfare and Institutions Code, relating to courts.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 199.3 of the Code of Civil Procedure is repealed.

SEC. 1.2. Section 199.3 is added to the Code of Civil Procedure, to read:

199.3. In Nevada County, trial jury venires for the Truckee Branch of the Superior Court shall be drawn from residents of the Truckee Division of the Nevada County Municipal Court, except as otherwise provided in this section. Prospective jurors residing in the Truckee Division of Nevada County Municipal Court, except as otherwise provided in this section, shall only be included in trial court venires or sessions of the municipal and superior court held within that division. However, each prospective juror residing in the county shall be given the opportunity to elect to serve on juries with respect to trials held anywhere in the county in accordance with the rules of the superior and municipal court, which shall afford to each eligible resident of the county an opportunity for selection as a trial jury venireman. Additionally, nothing in this section shall preclude the superior or municipal court, in its discretion, from ordering a countywide venire in the interest of justice.

SEC. 1.3. Section 1005 of the Code of Civil Procedure is amended to read:

1005. (a) Written notice shall be given, as prescribed in subdivision (b), for the following motions:

(1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.

(2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.

(3) Notice of Hearing for Claim of Exemption under Section 706.105.

(4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.

(5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.

(6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.

(7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.

(8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025.

(9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.

(10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.

(11) Motion to Expunge Notice of Pendency of Action pursuant to Section 405.30.

(12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.

(13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 15 calendar days before the time appointed for the hearing. However, if the notice is served by mail, the required 15-day period of notice before the time appointed for the hearing shall be increased by five days if the place of mailing and the place of address are within the State of California, 10 days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the required 15-day period of notice before the time appointed for the hearing shall be increased by two court days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this

section. All papers opposing a motion so noticed shall be filed with the court and served on each party at least five court days, and all reply papers at least two court days before the time appointed for the hearing. Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with the provisions of Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed.

The court, or a judge thereof, may prescribe a shorter time.

SEC. 1.4. Section 69601 of the Government Code is amended to read:

69601. In the County of Shasta there shall be five judges of the superior court.

SEC. 2. Section 69892.1 of the Government Code is amended to read:

69892.1. Notwithstanding any applicable county charter provision to the contrary, a majority of the judges of the superior court in any county with a population of over 7,000,000 as determined by the 1980 federal census shall appoint an executive officer/clerk of the superior court who shall hold office at the pleasure of the court and shall exercise administrative powers and perform other duties as may be required of him or her. The court shall fix the qualifications of the officer and may delegate to that officer any administrative powers and duties as are now or may hereafter by law be vested in or required to be exercised by the court. The executive officer/clerk of the superior court shall prepare an annual report and other reports as may be directed by the court. The annual salary of the executive officer/clerk of the superior court shall be as provided in Section 69894.1. He or she shall be allowed actual traveling and other necessary expenses while engaged in the discharge of the duties of his or her office.

SEC. 3. Section 69911 of the Government Code is amended to read:

69911. In the County of Kern, a majority of the judges of the superior court may appoint the following officers and employees whose salaries shall be:

Number	Title	Range
1	Superior Court Executive Officer/Jury Commissioner	64.7
3	Principal Attorney	62.4 or,
	Senior Attorney OR	59.6 or,
	Associate Attorney OR	56.7 or,
	Deputy Attorney OR	53.9

1	Court Commissioner	75–85% of a Superior Court judge's annual salary
1	Senior Juvenile Court Referee	75–85% of a Superior Court judge's annual salary
1	Court Services Manager	53.1
1	Superior Court Calendar Coordinator	48.3
1	Departmental Systems Coordinator II	55.2
1	Departmental Systems Coordinator I	53.2
1	Probate Examiner	48.5
13	Assistant Secretary, Superior Court	44.4
22	Court Reporter	55.8
4	Court Reporter Part–time	55.8
1	Asst. Clerk of the Court	61.1
1	Dept. Systems Coord. I	52.8
1	Data Entry OP II OR	39.8
	Data Entry Operator I	37.8
1	Court Financial Technician	47.9
1	Account Clerk IV	44.4
2	Account Clerk II OR	39.3
	Account Clerk I	36.5
1	Records Clerk	41.6
2	Microphotographer	40.7
2	Asst. Chief Deputy Clerk	53.0
1	CJIS Coord.	49.6
4	Supv. Superior Court Clerk	51.0
24	Superior Court Clerk II OR	47.8
	Superior Court Clerk I	44.2
10	Deputy Clerk III	46.2
32	Deputy Clerk II OR	44.1
	Deputy Clerk I	41.8

4	Typist Clerk II OR	38.1
	Typist Clerk I	35.3
1	Clerk III	40.7
2	Clerk II OR	38.0
	Clerk I	35.2
1	Senior Secretary	44.9
1	Secretary	43.0

The salary range set forth above is provided for in the salary schedule of the Kern County salary ordinance.

All personnel appointed pursuant to this section shall be noncivil service and shall serve at the pleasure of the majority of the judges. With the approval of the board of supervisors, the majority of the judges may establish any additional positions as are required, and, with the approval of the board of supervisors, may appoint and employ additional commissioners, officers, assistants, and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. Rates of compensation of all positions assigned to the superior court may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court. Any additional appointments or changes in compensation made pursuant to this section shall be on an interim basis and shall expire on the effective date of appropriate ratifying or modifying state legislation.

All personnel appointed pursuant to this section shall be entitled to the same employee benefits, with the exception of court holidays, that are provided to all other county employees by the board of supervisors.

SEC. 4. 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. $44,045
Step 2. $46,252
Step 3. $48,541
Step 4. $50,969

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 and sixty-nine dollars and forty cents ($169.40) 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 twelve dollars and ninety-three cents ($112.93) 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-nine dollars and forty cents ($169.40) 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-nine dollars and forty cents ($169.40) 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. 5. Section 72602.14 of the Government Code is amended to read:

72602.14. In addition to the number of judges prescribed by Section 72602, at such time as the Los Angeles County Board of Supervisors finds there are sufficient funds for one additional judge for the Newhall Municipal Court District and adopts a resolution to that effect, there shall be one additional judge for the Newhall Municipal Court District.

SEC. 5.1. Section 72608 of the Government Code is amended to read:

72608. Certain classes of positions prescribed in Article 1.5 (commencing with Section 72620), Article 1.6 (commencing with Section 72630), Article 2 (commencing with Section 72640), Article 3 (commencing with Section 72700), and Article 4 (commencing with Section 72750) are deemed to be related in job and compensation to position classifications included in the Los Angeles County Code, and in the case of certain classes of positions, to the administrative series included in Section 69894.1. In order to maintain the relationship of compensation and employee rights and benefits between officers and attachés of municipal courts and county or superior court employees having commensurate duties and responsibilities and to provide appropriate salary adjustments and employee rights and benefits for related classes of court positions, this section shall govern salary adjustments and employee rights and benefits for officers and attachés of municipal courts in Los Angeles County.

On the effective date of any amendment to the Los Angeles County Code adjusting the salary of a county employee classification listed in the table of positions set forth in this section, or on the effective date of a resolution or ordinance by the board of supervisors approving interim salary adjustments for superior court classes pursuant to Section 69894.2, the salary of the related municipal court position listed opposite thereto shall be adjusted an equivalent number of schedules or steps in a schedule in the salary schedule to which that position is attached. If the level of compensation established by any salary adjustment is not reflected in the salary schedule number provided for any court classification, the adjustment shall apply to each position in the classification on the effective date of the act fixing the salary schedule number. Classes of positions in the Management Appraisal and Performance Plan shall be compensated and adjusted in accordance with provisions approved by the board of supervisors.

Likewise, the salary of any court classification being enumerated in Article 1.5 (commencing with Section 72620), Article 1.6 (commencing with Section 72630), Article 2 (commencing with Section 72640), Article 3 (commencing with Section 72700), or Article 4 (commencing with Section 72750) for the first time as an amendment to this chapter shall be adjusted as necessary on the effective date of that amendment to provide the same relationship to the county classification to which it is attached as that established when the court classification was approved in accordance with Section 72607.

Table of Positions

Municipal Court Class	County or Superior Court Class
Officer Series	
Marshal	Commander
Assistant Marshal	Commander
Commander, Marshal	Commander
Captain, Marshal	Captain
Lieutenant, Marshal	Lieutenant
Sergeant, Marshal	Sergeant
Deputy Marshal IV	Deputy Sheriff IV
Deputy Marshal	Deputy Sheriff
Deputy Marshal Trainee	Deputy Sheriff Trainee
Deputy Marshal, Matron	Custody Assistant
Deputy Clerk, Custody Officer	Custody Assistant
Legal Services Specialist, Marshal	Safety Police Officer II
Security Officer I, Marshal	Safety Police Officer I
Security Officer II, Marshal	Safety Police Officer I
Municipal Courts Planning and Research	
Chief Staff Attorney, P & R	Senior Deputy County Counsel
Assistant Chief Staff Attorney, P & R	Senior Deputy County Counsel
Staff Attorney III, P & R	Senior Deputy County Counsel
Staff Attorney II, P & R	Senior Deputy County Counsel
Staff Attorney I, P & R	Senior Deputy County Counsel
Legal Research Assistant, P & R	Senior Deputy County Counsel
Planning Analyst, P & R	Program Specialist I, CAO
Planning Analyst Aide, P & R	Administrative Staff Trainee, CAO
Principal Budget Analyst, P & R	Program Specialist I, CAO
Head, Management Services, P & R	Program Specialist I, CAO
Senior Planning Analyst, P & R	Program Specialist I, CAO

Courtroom Series

All positions subject to civil service provisions enumerated in Articles 2, 3, and 4 which are not listed in this table.	Superior Court Clerk
Court Clerk, M.C.	Judicial Assistant, S.C. (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)
Municipal Court Clerk Trainee	Administrative Aide
Municipal Court Judicial Assistant, NCS	Judicial Assistant, S.C. (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)
Municipal Court Judicial Assistant Trainee, NCS	Administrative Aide (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)

Management Series

Court Administrator, LAMC	Management Appraisal and Performance Plan
Assistant Court Administrator, LAMC	Management Appraisal and Performance Plan
Deputy Court Administrator, Admin. and Financial Service, LAMC	Management Appraisal and Performance Plan
Deputy Court Administrator, Operations, LAMC	Management Appraisal and Performance Plan
Division Chief, Operations, LAMC	Management Appraisal and Performance Plan
Division Chief, Operations, NCS, LAMC	Management Appraisal and Performance Plan
Personnel Administrator, NCS, M.C.	Management Appraisal and Performance Plan
Senior Programming & System Analyst, M.C.	EDP Principal Programmer Analyst

Senior Programming & System Analyst, NCS, M.C.	EDP Principal Programmer Analyst
Managing Court Reporter, NCS, LAMC	Program Specialist I, CAO
Capital Projects Manager, M.C., NCS	Program Specialist I, CAO
Assistant Capital Projects Manager, NCS, LAMC	Program Specialist I, CAO
Court Information Officer, M.C., NCS	Public Information Officer I
Chief, Systems Division, NCS, M.C.	Management Appraisal and Performance Plan
Assistant Chief, Systems Division, M.C., NCS	Data Systems Coordinator
Senior Court Manager, NCS, LAMC	Program Specialist I, CAO
Assistant Division Chief Operations	Program Specialist I, CAO
Assistant Division Chief Operations, NCS, LAMC	Program Specialist I, CAO
Court Manager, M.C., NCS	Program Specialist I, CAO
Administrative Services Manager, M.C., NCS	Program Specialist I, CAO
Court Administrator (except Los Angeles Judicial District)	Structure adjustment to the nearest one-quarter of one percent approved by the board of supervisors for application to the ranges established for classes assigned to the Managmeent Appraisal and Performance Plan
Assistant Chief Deputy, Clerk, M.C.	Program Specialist I, CAO
Assistant Court Administrator (1 judge court)	Court Administrator (1 judge court)
Assistant Court Administrator (2 judge court)	Court Administrator (2 judge court)
Assistant Court Administrator (3, 4, 5 judge court)	Court Administrator (3, 4, 5 judge court)
Assistant Court Administrator (3, 4, 5 judge court) NCS	Court Administrator (3, 4, 5 judge court)
Assistant Court Administrator (6 judge court)	Court Administrator (6 judge court)
Assistant Court Administrator (7 judge court)	Court Administrator (7 judge court)

Assistant Court Administrator (8 judge court)	Court Administrator (8 judge court)
Assistant Court Administrator (9 judge court)	Court Administrator (9 judge court)
Assistant Court Administrator (10, 11, 12 judge court)	Court Administrator (10, 11, 12 judge court)
Judicial Management Intern, M.C., NCS	Administrative Aide
Division Chief, Long Beach M.C.	Program Specialist I, CAO
Principal Clerk, Los Angeles	Program Specialist I, CAO
Training Officer, NCS, M.C.	Program Specialist I, CAO
Chief Deputy Clerk	Program Specialist I, CAO
Division Chief, NCS, M.C.	Program Specialist I, CAO
Executive Officer, Administratively Consolidated Municipal Courts, NCS	Court Administrator (10, 11, 12 judge court)
District Court Administrator (1 judge court), NCS	Court Administrator (1 judge court)
District Court Administrator (3, 4, 5 judge court), NCS	Court Administrator (3, 4, 5 judge court)
District Court Administrator (9 judge court), NCS	Court Administrator (9 judge court)

Personnel–Administrative Services–Accounting Series

Head, Fiscal & Administrative Services, Marshal	Program Specialist I, CAO
Head Personnel Technician, M.C., NCS	Head Departmental Personnel Technician
Head Personnel Technician, Marshal	Head Departmental Personnel Technician
Personnel Technician, M.C.	Senior Departmental Personnel Technician
Personnel Technician, M.C., NCS	Senior Departmental Personnel Technician
Personnel Technician, Marshal	Senior Departmental Personnel Technician
Personnel Assistant, M.C.	Departmental Personnel Assistant
Personnel Assistant, M.C., NCS	Departmental Personnel Assistant
Personnel Assistant, Marshal	Departmental Personnel Assistant

Safety Officer, Marshal	Safety Officer
Senior Personnel Assistant, M.C.	Senior Departmental Personnel Assistant
Senior Personnel Assistant, Marshal	Senior Departmental Personnel Assistant
Senior Personnel Assistant, M.C., NCS	Senior Departmental Personnel Assistant
Senior Personnel Technician, M.C.	Head, Departmental Personnel Technician
Senior Staff Assistant, Marshal	Program Specialist I, CAO
Staff Assistant, Marshal	Program Specialist I, CAO
Principal Clerk, Marshal	Program Specialist I, CAO
Assistant Head, Fiscal & Administrative Services, Marshal	Program Specialist I, CAO
Executive Assistant, Presiding Judges Association	Program Specialist I, CAO
Principal Administrative Assistant, M.C.	Administrative Assistant III
Principal Administrative Assistant, M.C., NCS	Administrative Assistant III
Principal Assistant, Fiscal Services, Marshal	Program Specialist I, CAO
Principal Personnel Assistant, M.C.	Principal Departmental Personnel Assistant
Principal Personnel Assistant, M.C., NCS	Principal Departmental Personnel Assistant
Supervising Accountant, M.C., NCS	Senior Accountant Auditor
Senior Administrative Assistant, M.C.	Administrative Assistant II
Senior Administrative Assistant, M.C., NCS	Administrative Assistant II
Administrative Assistant, M.C.	Administrative Assistant I
Administrative Assistant, M.C., NCS	Administrative Assistant I
Staff Assistant, M.C.	Staff Assistant I
Staff Assistant, M.C., NCS	Staff Assistant I
Statistical Analyst, M.C.	Statistical Analyst
Statistical Analyst, M.C., NCS	Statistical Analyst
Accountant, M.C.	Accountant II
Accountant, M.C., NCS	Accountant II
Accounting Technician, M.C.	Accounting Technician I

Accounting Technician, M.C., NCS	Accounting Technician I
Intermediate Accountant, M.C.	Intermediate Accountant Auditor
Intermediate Accountant, M.C., NCS	Intermediate Accountant Auditor
Senior Accountant, M.C.	Intermediate Accountant Auditor
Senior Accountant, M.C., NCS	Intermediate Accountant Auditor
Facilities Services Assistant, M.C.	Facilities Services Assistant
Facilities Services Assistant, M.C., NCS	Facilities Services Assistant
Facilities Planning Assistant, M.C.	Facilities Planning Assistant
Facilities Planning Assistant, M.C., NCS	Facilities Planning Assistant
Staff Development Specialist, Muni Crt	Staff Development Specialist I, D.A.
Staff Development Specialist, M.C., NCS	Staff Development Specialist I, D.A.
Account Clerk, M.C.	Account Clerk II
Financial Evaluator, M.C., NCS	Financial Evaluator
Financial Evaluator Assistant, M.C., NCS	Financial Evaluator Assistant
Personnel Clerk, M.C.	Senior Typist-Clerk
Personnel Clerk, M.C., NCS	Senior Typist-Clerk
Management Services Specialist, M.C., NCS	Management Analyst, CAO

Secretarial and Stenographic Series

Secretary to Presiding Judge, LAMC	Executive Secretary II
Secretary to Presiding Judge, M.C., NCS	Executive Secretary II
Executive Secretary, M.C.	Executive Secretary II
Executive Secretary, M.C., NCS	Executive Secretary II
Senior Management Secretary, LAMC	Executive Secretary II
Senior Management Secretary, M.C., NCS	Executive Secretary II
Management Secretary, M.C.	Executive Secretary II

Management Secretary, M.C., NCS	Executive Secretary II
Management Secretary II, M.C., NCS	Senior Management Secretary II
Executive Secretary, Marshal	Executive Secretary II
Senior Secretary II, Muni Ct	Senior Secretary II
Senior Secretary II, M.C., NCS	Senior Secretary II
Management Secretary, Marshal	Senior Secretary II
Senior Judicial Secretary, Muni Ct	Senior Secretary II
Senior Judicial Secretary, M.C., NCS	Senior Secretary II
Senior Secretary III, Muni Ct	Senior Secretary II
Senior Secretary III, M.C., NCS	Senior Secretary II
Senior Secretary I, Muni Ct	Senior Secretary II
Senior Secretary I, M.C., NCS	Senior Secretary II
Secretary, Marshal	Senior Secretary II
Secretary, Muni Ct	Senior Secretary II
Secretary, M.C., NCS	Senior Secretary II
Senior Secretary, Marshal	Senior Secretary II
Stenographer, M.C.	Legal Office Support Assistant I
Stenographer, M.C., NCS	Legal Office Support Assistant I

Clerical Series

Deputy Municipal Court Clerk I	Intermediate Typist-Clerk
Deputy Municipal Court Clerk I, NCS	Intermediate Typist-Clerk
Deputy Clerk II, Marshal	Intermediate Typist-Clerk
Deputy Clerk I, Marshal	Intermediate Typist-Clerk
Deputy Municipal Court Clerk II	Intermediate Typist-Clerk
Deputy Municipal Court Clerk II, NCS	Intermediate Typist-Clerk
Deputy Clerk III, M.C.	Intermediate Typist-Clerk
Deputy Clerk III, M.C., NCS	Intermediate Typist-Clerk
Deputy Clerk III, Marshal	Intermediate Typist-Clerk
Administrative Clerk, Marshal	Intermediate Typist-Clerk
Clerical Aide, Municipal Court	Intermediate Typist-Clerk
Clerical Aide, M.C., NCS	Intermediate Typist-Clerk

Office Services Assistant I, M.C., NCS	Intermediate Typist-Clerk
Office Services Assistant II, M.C., NCS	Intermediate Typist-Clerk
Office Services Assistant III, M.C., NCS	Intermediate Typist-Clerk
Senior Payroll Clerk, Marshal	Payroll Clerk I
Supervising Payroll Clerk, Marshal	Supervising Payroll Clerk I
Payroll Clerk, Marshal	Assistant Payroll Clerk II
Assistant Payroll Technician, M.C., NCS	Payroll Clerk I
Payroll Technician, M.C., NCS	Payroll Clerk II
Supervising Payroll Technician, M.C., NCS	Supervising Payroll Clerk II
Marshal's Dispatcher I	Communication Operator II, Sheriff
Marshal's Dispatcher II	Communication Operator II, Sheriff
Supervising Deputy Clerk I, M.C.	Supervising Typist-Clerk
Deputy Clerk Supervisor, NCS, LAMC	Supervising Typist-Clerk
Deputy Clerk Supervisor, M.C., NCS	Supervising Typist-Clerk
Senior Courtroom Clerk, M.C., NCS	Senior Judicial Assistant

Supply, Duplicating, and Miscellaneous Series

Supply and Reproduction Supervisor, Marshal	Warehouse Worker II
Supply and Reproduction Assistant, Marshal	Warehouse Worker II
Warehouse Worker Aide, M.C., NCS	Warehouse Worker Aide
Procurement Assistant I, M.C., NCS	Procurement Assistant I
Procurement Assistant II, M.C.	Procurement Assistant II
Procurement Assistant II, M.C., NCS	Procurement Assistant II
Procurement Aide, M.C.	Procurement Aide
Procurement Aide, M.C., NCS	Procurement Aide
Light Vehicle Driver, Marshal	Communications Messenger Driver

Light Vehicle Driver, M.C.	Light Vehicle Driver
Light Vehicle Driver, M.C., NCS	Light Vehicle Driver
General Maintenance Supervisor, M.C.	General Maintenance Supervisor
General Maintenance Supervisor, M.C., NCS	General Maintenance Supervisor
General Maintenance Worker, M.C.	General Maintenance Worker
General Maintenance Worker, M.C., NCS	General Maintenance Worker
Senior General Maintenance Worker, M.C., NCS	Senior General Maintenance Worker
Student Professional Worker, M.C., NCS	Student Professional Worker
Student Worker, M.C., NCS	Student Worker
Deputy Municipal Court Clerk Aide, NCS	Student Worker
Warehouse Worker I, Marshal	Warehouse Worker I
Warehouse Worker I, M.C., NCS	Warehouse Worker I
Warehouse Worker II, M.C.	Warehouse Worker II
Warehouse Worker II, M.C., NCS	Warehouse Worker II
Warehouse Manager, M.C.	Warehouse Manager
Warehouse Manager, M.C., NCS	Warehouse Manager
Graphic Artist, M.C.	Graphic Artist
Graphic Artist, M.C., NCS	Graphic Artist
Custodian, M.C., NCS	Custodian
Supervising Law Clerk	Supervising Law Clerk (SC)
Supervising Law Clerk, M.C., NCS	Supervising Law Clerk (SC)
Law Clerk	Law Clerk (SC)
Interpreter, M.C., NCS	Interpreter (SC)

Management Information and Data Processing Series

Data Systems Coordinator, M.C.	Data Systems Coordinator
Data Systems Coordinator, M.C., NCS	Data Systems Coordinator
Data Systems Analyst Aide, M.C., NCS	Data Systems Analyst Aide

Data Systems Analyst I, M.C.	Data Systems Analyst I
Data Systems Analyst I, M.C., NCS	Data Systems Analyst I
Data Systems Analyst II, M.C.	Data Systems Analyst II
Data Systems Analyst II, M.C., NCS	Data Systems Analyst II
Data Conversion Supervisor I, M.C.	Data Conversion Supervisor I
Data Conversion Supervisor I, M.C., NCS	Data Conversion Supervisor I
Data Conversion Supervisor III, M.C.	Data Conversion Supervisor III
Data Conversion Supervisor III, M.C., NCS	Data Conversion Supervisor III
EDP Staff Aide, M.C.	Systems Aide
EDP Staff Aide, M.C., NCS	Systems Aide
EDP Support Analyst II, M.C., NCS	EDP Support Analyst II
Supervising Computer Operator, M.C.	Supervising Computer Operator
Supervising Computer Operator, M.C., NCS	Supervising Computer Operator
Computer Operations Supervisor, M.C.	Supervising Computer Operator
Computer Operations Supervisor, M.C., NCS	Supervising Computer Operator
Computer Equipment Operator, M.C.	Computer Equipment Operator
Computer System Operator, M.C.	Computer Systems Operator
Senior Data Control Clerk, M.C.	Senior Data Control Clerk
Data Control Clerk, M.C.	Data Control Clerk
Senior Data Conversion Equipment Operator, M.C.	Senior Data Conversion Equipment Operator
Data Conversion Equipment Operator I, M.C.	Data Conversion Equipment Operator I
Principal Programmer Analyst, M.C.	EDP Principal Programmer Analyst
Principal Programmer Analyst, M.C., NCS	EDP Principal Programmer Analyst
Senior Programmer Analyst, M.C.	EDP Programmer Analyst II
Senior Programmer Analyst, M.C., NCS	EDP Programmer Analyst II

Systems Programmer, M.C.	EDP Systems Programmer
Systems Programmer, M.C., NCS	EDP Systems Programmer
Telecommunications Technician, M.C.	Computer Systems Operator
Telecommunications Technician, M.C., NCS	Computer Systems Operator
Senior Telecommunications Systems Engineer, M.C., NCS	Senior Telecommunications Systems Engineer
Data Processing Specialist I, M.C., NCS	Data Processing Specialist I
Systems Aide, M.C., NCS	Systems Aide
Senior Systems Aide, M.C., NCS	Senior Systems Aide

All classes of positions approved by a majority of the judges of the municipal court and the board of supervisors for inclusion in the Los Angeles County Management Appraisal and Performance Plan will be compensated in accordance with this plan as set forth in Part 3, Chapter 6.08, of the Los Angeles County Code. All of these provisions are applicable to participants in the marshal's department, except that for the marshal, the appointing authority is the municipal court judges of Los Angeles County, and for all other participants in the marshal's department, the appointing authority is the marshal. For purposes of MAP administration only, the appointing authority for the court administrator, Los Angeles Judicial District, is the court's executive board. The court administrator, is the appointing authority for all other participants in the Los Angeles Judicial District.

The presiding judge, the immediate past presiding judge (if still a member of the Los Angeles Municipal Court) and the assistant presiding judge will confer with the court administrator to establish new performance goals and evaluate the completion of previously established goals; these judges will then rate the court administrator's performance using the MAP rating categories established in the county code. The presiding judge shall present this rating to the executive board for ratification at its October meeting. In the event the executive board does not act upon the rating, that rating will stand. In the event a rating is not completed, the court administrator's rating is deemed to be "merit performance." Adjustments to the court administrator's salary will be in accordance with Part 3, Chapter 6.08, of the Los Angeles County Code.

Any existing special pay provision applicable to court classes included in MAP and which is expressed in terms of additional schedules of compensation will be converted to a percentage basis in accordance with the county's plan which equates each schedule with 2.75 percent.

Salary adjustments made pursuant to this section shall be on an interim basis and shall expire 90 days after the adjournment of the next regular session of the Legislature unless ratified at such session.

Officers and attachés of municipal courts in Los Angeles County shall be entitled to all employee rights, programs and benefits, including, but not limited to, paid medical plans, management incentive, management appraisal and performance plan, deferred compensation plans, flexible benefit plans, and early separation programs, parking and cafeteria privileges, longevity pay, shooting allowance, uniform and equipment allowance, and the same rights to meet with those entities which prescribe their compensation, that are provided for or made applicable to the related Los Angeles County and superior court employee classification. Participation in management incentive early separation programs and management appraisal and performance plan shall be established by joint action and approval of a majority of the board of supervisors and a majority of the judges of the court, except in the Los Angeles Judicial District where joint action shall be approved by a majority of the board of supervisors and a majority of the court's executive board.

Bonus Level I assignments of deputy marshals are as follows:
Nineteen positions—assistant commander, small division.
Twelve positions—court supervisor.
Nine positions—field supervisor.
Nine positions—office supervisor.
Three positions—communications and fleet management supervisor.
One position—training officer.
One position—real estate levy/bookkeeping section supervisor.
Bonus Level II assignments of deputy marshals are as follows:
One position—security liaison and investigations.

Deputy marshals with Bonus Level I assignments shall receive additional compensation in the same amounts, for the same periods, and paid on the same terms, as deputy sheriffs assigned to Bonus Level I positions. Deputy marshals with Bonus Level II assignments shall receive additional compensation in the same amounts, for the same periods, and paid on the same terms, as deputy sheriffs assigned to Bonus Level II positions.

In addition to the salary adjustment otherwise provided by this section, persons employed in the classifications of executive secretary, M.C., senior management secretary, M.C., and secretary to the presiding judge shall receive a one-time only two-schedule salary increase effective January 1, 1989. The resulting salary rate shall constitute the base rates for subsequent salary adjustments.

In addition to the salary provided by the applicable management appraisal and performance plan provisions, a 16.5 percent bonus shall be paid to no more than one position of deputy court administrator

in the Los Angeles Municipal Court who is admitted to practice law before all courts in California and required to render legal opinions and provide legal advice to the court administrator and judges.

Any deputy municipal court clerk I, deputy municipal court clerk I, NCS, deputy municipal court clerk II, deputy municipal court clerk II, NCS, deputy clerk III, M.C., deputy clerk III, M.C., NCS, deputy clerk IV, M.C., municipal court judicial assistant, NCS, or court clerk, M.C. who, in addition to a regular courtroom assignment, is required to operate and monitor electronic recording equipment to produce the official record of the court proceedings shall receive a two-schedule increase in compensation while so engaged. Effective January 3, 1989, any deputy clerk IV, M.C., municipal court judicial assistant, NCS, or court clerk, M.C. assigned to a courtroom, who in addition to his or her regular duties, is required to operate and monitor electronic recording equipment to produce a record of court proceedings shall receive an increase of eight standard salary levels while so engaged. However, in no event shall a person who is receiving additional compensation for performing duties involving greater skill and responsibility as described in subdivision (b) of Section 72705 or subdivision (k), (*l*), or (m) of Section 72755 be eligible to receive additional compensation pursuant to this subdivision, except for a deputy clerk III, M.C. or deputy clerk III, M.C., NCS assigned to the regular duties of a deputy clerk IV, M.C. or court clerk, M.C. as provided in subdivision (j) of Section 72755.

SEC. 5.2. Section 72609 of the Government Code is amended to read:

72609. Except where otherwise provided by law, officers and attachés of municipal courts in Los Angeles County shall receive a monthly salary at a rate specified in the Los Angeles County Code as follows:

Title	Range/ Schedule
Account Clerk, M.C.	51L
Accountant, M.C.	65D
Accountant, M.C., NCS	65D
Accounting Officer II	76B
Accounting Technician, M.C.	54H
Accounting Technician, M.C., NCS	54H
Administrative Assistant, M.C.	N2 58F
Administrative Assistant, M.C., NCS	N2 58F
Administrative Clerk, Marshal	59C
Administrative Services Manager, M.C., NCS	86F
Assistant Capital Projects Manager, NCS, LAMC	83K
Assistant Chief Deputy Clerk, M.C.	76G

Assistant Chief Staff Attorney, Planning and Research	NW 95K
Assistant Chief, Systems Division, M.C., NCS	89B
Assistant Court Administrator LAMC	N23 R15
Assistant Court Administrator (1 judge court)	80D
Assistant Court Administrator (2 judge court)	81D
Assistant Court Administrator (3, 4, 5 judge court)	82D
Assistant Court Administrator (3, 4, 5 judge court) NCS	82D
Assistant Court Administrator (6 judge court)	83D
Assistant Court Administrator (7 judge court)	84D
Assistant Court Administrator (8 judge court)	85D
Assistant Court Administrator (9 judge court)	NW 86D
Assistant Court Administrator (10, 11, 12 judge court)	87D
Assistant Division Chief, Operations	83K
Assistant Division Chief, Operations, NCS, LAMC	83K
Assistant Head, Fiscal & Administrative Services, Marshal	82K
Assistant Marshal	114C
Assistant Payroll Technician, M.C., NCS	53K
Capital Projects Manager, M.C., NCS	89B
Captain, Marshal	100H
Chief Deputy Clerk	75G
Chief Staff Attorney, Planning and Research	NX 100A
Chief, Systems Division, NCS, M.C.	N23 R12
Clerical Aide, Municipal Court	34D
Clerical Aide, M.C., NCS	34D
Commander, Marshal	105B
Computer Equipment Operator, M.C.	52J
Computer Operations Supervisor, M.C.	75A
Computer Operations Supervisor, M.C., NCS	75A
Computer Systems Operator, M.C.	58E
Court Administrator (1 judge court)	88D
Court Administrator (2 judge court)	89D
Court Administrator (3, 4, 5 judge court)	90D
Court Administrator (6 judge court)	91D
Court Administrator (7 judge court)	92D
Court Administrator (8 judge court)	93D
Court Administrator (9 judge court)	94D
Court Administrator (10, 11, 12 judge court)	95D

Court Administrator, Los Angeles Municipal Court	N23 R18
Court Clerk, M.C.	NX 67J
Court Information Officer, M.C., NCS	83K
Court Manager, M.C., NCS	78F
Custodian M.C., NCS	43L
Data Control Clerk, M.C.	48F
Data Conversion Equipment Operator I, M.C.	50L
Data Conversion Supervisor I, M.C.	58B
Data Conversion Supervisor I, M.C., NCS	58B
Data Conversion Supervisor III, M.C.	67H
Data Conversion Supervisor III, M.C., NCS	67H
Data Processing Specialist I, M.C., NCS	92A
Data Systems Analyst Aide, M.C., NCS	66A
Data Systems Analyst I, M.C.	72G
Data Systems Analyst I, M.C., NCS	72G
Data Systems Analyst II, M.C.	75C
Data Systems Analyst II, M.C., NCS	75C
Data Systems Coordinator, M.C.	81J
Data Systems Coordinator, M.C., NCS	81J
Deputy Clerk I, Marshal	49E
Deputy Clerk II, Marshal	52H
Deputy Clerk III, Marshal	55D
Deputy Clerk III, M.C.	55D
Deputy Clerk III, M.C., NCS	55D
Deputy Clerk IV, M.C.	NX 66B
Deputy Clerk-Custody Officer, Marshal	59F
Deputy Clerk Supervisor, NCS, LAMC	61H
Deputy Clerk Supervisor, M.C., NCS	61H
Deputy Court Administrator, Administrative & Financial Services, LAMC	N23 R13
Deputy Court Administrator, Operations, LAMC	N23 R13
Deputy Marshal	75J
Deputy Marshal IV	79J
Deputy Marshal Matron	64H
Deputy Marshal Trainee	75J
Deputy Municipal Court Clerk I	N3 49E
Deputy Municipal Court Clerk I, NCS	N3 49E
Deputy Municipal Court Clerk II	52H
Deputy Municipal Court Clerk II, NCS	52H
Deputy Municipal Court Clerk Aide, NCS	FH $6.47

District Court Administrator (1 judge court), NCS	84D
District Court Administrator (3, 4, 5 judge court), NCS	86D
District Court Administrator (9 judge court), NCS	90D
Division Chief, NCS, M.C.	80G
Division Chief, Long Beach, M.C.	80G
Division Chief, Operations, LAMC	N23 R11
Division Chief, Operations, NCS, LAMC	N23 R11
EDP Staff Aide, M.C.	57F
EDP Staff Aide, M.C., NCS	57F
EDP Support Analyst II, M.C., NCS	N2 74K
Executive Assistant to Presiding Judges Association	N4 74J
Executive Officer, Administratively Consolidated Municipal Courts, NCS	98H
Executive Secretary, M.C.	N3 77E
Executive Secretary, M.C., NCS	N3 77E
Executive Secretary, Marshal	N3 73F
Facilities Planning Assistant, M.C.	67F
Facilities Planning Assistant, M.C., NCS	67F
Facilities Services Assistant, M.C.	61F
Facilities Services Assistant, M.C., NCS	61F
Financial Evaluator, M.C., NCS	58C
Financial Evaluator Assistant, M.C., NCS	52C
General Maintenance Supervisor, M.C.	66H
General Maintenance Supervisor, M.C., NCS	66H
General Maintenance Worker, M.C.	57E
General Maintenance Worker, M.C., NCS	57E
Graphic Artist, M.C.	63G
Graphic Artist, M.C., NCS	63G
Head, Fiscal and Administrative Services, Marshal	89G
Head, Management Services, Planning and Research	80D
Head, Personnel Technician, M.C., NCS	79G
Head, Personnel Technician, Marshal	79G
Intermediate Accountant, M.C.	75A
Intermediate Accountant, M.C., NCS	75A
Interpreter, M.C., NCS	56A
Judicial Management Intern, M.C., NCS	67K
Law Clerk	73F

Legal Research Assistant, Planning and Research	FH $11.66
Legal Services Specialist, Marshal	57L
Lieutenant, Marshal	92H
Light Vehicle Driver, M.C.	46G
Light Vehicle Driver, M.C., NCS	46G
Light Vehicle Driver, Marshal	46G
Management Secretary, M.C.	N3 67E
Management Secretary, M.C., NCS	N3 67E
Management Secretary II, M.C., NCS	N3 71E
Management Secretary, Marshal	N3 70F
Management Services Specialist, M.C., NCS	NCRT 60B
Managing Court Reporter, NCS, LAMC	86F
Marshal	117L
Marshal's Dispatcher I	58A
Marshal's Dispatcher II	64A
Municipal Court Clerk Trainee	F $2165.65
Municipal Court Judicial Assistant, NCS	NX 67J
Municipal Court Judicial Assistant Trainee, NCS	F $2165.65
Office Services Assistant I, M.C., NCS	49E
Office Services Assistant II, M.C., NCS	52H
Office Services Assistant III, M.C., NCS	55D
Payroll Clerk, Marshal	54L
Payroll Technician, M.C., NCS	59K
Personnel Administrator, NCS, M.C.	N23 R11
Personnel Assistant, M.C.	55J
Personnel Assistant, M.C., NCS	55J
Personnel Assistant, Marshal	55J
Personnel Clerk, M.C.	53K
Personnel Clerk, M.C., NCS	53K
Personnel Technician, Marshal	75G
Personnel Technician, M.C.	75G
Personnel Technician, M.C., NCS	75G
Planning Analyst Aide, Planning and Research	N2 61A
Planning Analyst, Planning and Research	71E
Principal Administrative Assistant, M.C.	71K
Principal Administrative Assistant, M.C., NCS	71K
Principal Assistant, Fiscal Services, Marshal	78F
Principal Budget Analyst, Planning and Research	92G
Principal Clerk, Los Angeles	72H
Principal Clerk, Marshal	61K
Principal Personnel Assistant, M.C.	71G
Principal Personnel Assistant, M.C., NCS	71G

Principal Programmer Analyst, M.C.	84K
Principal Programmer Analyst, M.C., NCS	84K
Procurement Aide, M.C.	55C
Procurement Aide, M.C., NCS	55C
Procurement Assistant I, M.C., NCS	59B
Procurement Assistant II, M.C.	63B
Procurement Assistant II, M.C., NCS	63B
Safety Officer, Marshal	75L
Secretary, Marshal	61E
Secretary, Muni Ct	59E
Secretary, M.C., NCS	59E
Secretary to Presiding Judge, LAMC	N3 79E
Secretary to Presiding Judge, M.C., NCS	N3 79E
Security Officer I, Marshal	F $1492.97
Security Officer II, Marshal	55L
Senior Accountant, M.C.	77J
Senior Accountant, M.C., NCS	77J
Senior Administrative Assistant, M.C.	67K
Senior Administrative Assistant, M.C., NCS	67K
Senior Courtroom Clerk, M.C., NCS	76F
Senior Court Manager, NCS, LAMC	83K
Senior Data Control Clerk, M.C.	52D
Senior Data Conversion Equipment Operator, M.C.	54L
Senior General Maintenance Worker, M.C., NCS	61E
Senior Judicial Secretary, Muni Ct	N3 66E
Senior Judicial Secretary, M.C., NCS	N3 66E
Senior Management Secretary, LAMC	N3 73E
Senior Management Secretary, M.C., NCS	N3 73E
Senior Payroll Clerk, Marshal	57L
Senior Personnel Assistant, M.C.	64J
Senior Personnel Assistant, M.C., NCS	64J
Senior Personnel Assistant, Marshal	64J
Senior Personnel Technician, M.C.	79E
Senior Planning Analyst, Planning and Research	74J
Senior Programming and System Analyst, M.C.	78F
Senior Programming and System Analyst, M.C., NCS	78F
Senior Programmer Analyst, M.C.	80C
Senior Programmer Analyst, M.C., NCS	80C
Senior Secretary I, Muni Ct	61E
Senior Secretary I, M.C., NCS	61E

Senior Secretary II, Muni Ct	63E
Senior Secretary II, M.C., NCS	63E
Senior Secretary III, Muni Ct	N3 66E
Senior Secretary III, M.C., NCS	N3 66E
Senior Secretary, Marshal	65E
Senior Staff Assistant, Marshal	74G
Senior Systems Aide, M.C., NCS	63F
Senior Telecommunications Systems, Engineer, M.C., NCS	89B
Sergeant, Marshal	86D
Staff Assistant, Marshal	64J
Staff Assistant, Muni Ct	59E
Staff Assistant, M.C., NCS	59E
Staff Attorney I, Planning and Research	N3 75F
Staff Attorney II, Planning and Research	NW 86K
Staff Attorney III, Planning and Research	NW 95K
Staff Development Specialist, Muni Ct	72F
Staff Development Specialist, M.C., NCS	72F
Statistical Analyst, M.C.	61J
Statistical Analyst, M.C., NCS	61J
Stenographer, M.C.	N3-Z 58L
Stenographer, M.C., NCS	N3-Z 58L
Student Professional Worker	FH $7.82
Student Professional Worker, M.C., NCS	FH $7.82
Student Worker	FH $6.47
Student Worker, M.C., NCS	FH $6.47
Supervising Accountant, M.C., NCS	80L
Supervising Branch Clerk	NX 70L
Supervising Computer Operator, M.C.	65A
Supervising Computer Operator, M.C., NCS	65A
Supervising Deputy Clerk I, M.C.	59H
Supervising Deputy Clerk II, M.C.	NX 68B
Supervising Law Clerk	75F
Supervising Law Clerk, M.C., NCS	75F
Supervising Payroll Clerk, Marshal	60L
Supervising Payroll Technician, M.C., NCS	67B
Supply and Reproduction Assistant, Marshal	51L
Supply and Reproduction Supervisor, Marshal	57L
Systems Aide, M.C., NCS	57F
Systems Programmer, M.C.	78C
Systems Programmer, M.C., NCS	78C
Telecommunications Technician, M.C.	66E

Telecommunications Technician, M.C., NCS	66E
Training Officer, NCS, M.C.	81B
Volunteer	W/O Comp.
Warehouse Manager, M.C.	66B
Warehouse Manager, M.C., NCS	66B
Warehouse Worker I, Marshal	53J
Warehouse Worker I, M.C., NCS	54F
Warehouse Worker II, M.C.	58F
Warehouse Worker II, M.C., NCS	58F
Warehouse Worker Aide, M.C., NCS	52F

The term "schedule" as used in this section refers to the salary schedule of the Los Angeles County Code. The term "range" as used in this section refers to the Management Appraisal and Performance Plan of Los Angeles County.

As defined in Section 6.28.030 of the Los Angeles County Code, the following prefixes are used instead of schedule numbers:

F—Flat rate per month.
FD—Flat rate per day.
FH—Flat rate per hour.

As defined in Section 6.28.040 of the Los Angeles County Code, the following abbreviations are used in conjunction with or instead of schedule or range numbers:

N—Note (refers to notes at end of Section 6.28.050).
W/O Comp.—Without compensation.

"R" or "A" used instead of a schedule number indicates a position's inclusion in the county's Management Appraisal and Performance Plan. The grade number following the "R" or "A" designation indicates the salary range. Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the Los Angeles County Code.

The term "NCS" as used in the title of a class in this chapter refers to a non-civil service position. Personnel appointed to this class shall serve at the pleasure of the appointing authority and may at any time be removed by the appointing authority.

SEC. 5.3. Section 72702.5 of the Government Code is amended to read:

72702.5. The clerk may appoint one deputy clerk who shall be assistant court administrator, one deputy clerk who shall be deputy court administrator, administrative and financial services, and four deputy clerks who shall be deputy court administrators, operations, and that number of law clerks paid by the hour as approved by the board of supervisors which positions shall not be deemed civil service

positions. The positions of assistant court administrator, deputy court administrator, administrative and financial services, deputy court administrator, operations, legal research assistant, and all positions designated in the Management Appraisal and Performance Plan for the Los Angeles Municipal Court shall not be deemed civil service positions for any person initially appointed to these positions after November 1, 1987. Incumbents with civil service status as of November 1, 1987, shall retain civil service status. Each person appointed to these positions shall serve at the pleasure of the court administrator.

SEC. 5.4. Section 72769 of the Government Code is amended to read:

72769. In the Downey Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of that court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Nine deputy municipal court clerks I.

(2) Twelve deputy municipal court clerks II.

(3) Nine deputy clerks III, M.C.

(4) Six court clerks, M.C.

(5) Two accounting technicians, M.C.

(6) One principal clerk, Los Angeles.

(7) One secretary, Muni Ct.

(8) Five student workers, M.C., NCS.

(9) Three supervising deputy clerks II, M.C.

(10) One financial evaluator, M.C., NCS.

(11) One procurement aide, M.C.

(12) One assistant court administrator, who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 6. Section 72776 of the Government Code is repealed.

SEC. 7. Section 72776 is added to the Government Code, to read:

72776. In the Newhall Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who, for any vacancy occurring on or after January 1, 1991, shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Twelve deputy municipal court clerks II.

(2) Six deputy clerks III, M.C.

(3) Five court clerks, M.C., plus one additional court clerk, M.C. for each commissioner or traffic referee appointed pursuant to Section 72400, 72450, or 72607.

(4) One accounting technician, M.C.

(5) One senior secretary III, M.C.

(6) One supervising deputy clerk II, M.C.
(7) One data systems analyst I, M.C.
(8) Two student workers.
(9) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 7.1. Section 72778 of the Government Code is amended to read:

72778. In the Pomona Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:
(1) Ten deputy municipal court clerks I.
(2) Eleven deputy municipal court clerks II.
(3) Ten deputy clerks III, M.C.
(4) Ten court clerks, M.C.
(5) One student professional worker.
(6) Four student workers, M.C., NCS.
(7) Two assistant chief deputy clerks, M.C.
(8) One staff assistant, Muni Ct.
(9) One data systems analyst I, M.C.
(10) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 7.2. Section 72782 of the Government Code is amended to read:

72782. In the South Bay Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The court administrator may appoint:
(1) Five deputy municipal court clerks I.
(2) Fifteen deputy municipal court clerks II.
(3) Twenty-six deputy clerks III, M.C.
(4) One deputy clerk, senior personnel assistant, M.C., NCS.
(5) One deputy clerk, senior judicial secretary, M.C., NCS.
(6) Seven supervising deputy clerks I, M.C.
(7) Two student professional workers, M.C., NCS.
(8) Five custodians, M.C., NCS.
(9) One general maintenance supervisor, M.C., NCS.
(10) Four deputy clerks, principal clerk, Los Angeles.
(11) One accountant, M.C., NCS.
(12) One data systems analyst I, M.C., NCS.
(13) One data systems analyst II, M.C., NCS.
(14) One deputy clerk III, M.C., NCS.

(15) Six deputy clerk supervisors, M.C., NCS.
(16) One deputy municipal court clerk I, NCS.
(17) One deputy municipal court clerk II, NCS.
(18) One deputy municipal court clerk aide, NCS.
(19) Four division chiefs, M.C., NCS.
(20) Two law clerks, M.C.
(21) One management secretary II, M.C., NCS.
(22) Twelve municipal court judicial assistants, NCS.
(23) One office services assistant I, M.C., NCS.
(24) One office services assistant II, M.C., NCS.
(25) One office services assistant III, M.C., NCS.
(26) One senior accountant, M.C., NCS.
(27) One senior administrative assistant, M.C., NCS.
(28) One senior general maintenance worker, M.C., NCS.
(29) Three staff assistants, M.C., NCS.
(30) One deputy clerk, assistant court administrator, who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 7.3. Section 72784 of the Government Code is amended to read:

72784. In the Whittier Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:
(1) Nine deputy municipal court clerks I.
(2) Eleven deputy municipal court clerks II.
(3) Eight deputy clerks III, M.C.
(4) Six judicial assistants.
(5) One principal administrative assistant, M.C.
(6) One student professional worker, M.C., NCS.
(7) Five student workers, M.C., NCS.
(8) Three supervising deputy clerks II, M.C.
(9) One financial evaluator, M.C., NCS.
(10) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 8. Section 73077 of the Government Code is amended to read:

73077. (a) Except as provided in this section, each clerk and deputy clerk appointed to a position enumerated in this chapter, where compensation is designated by a schedule of steps, the rate of compensation in case of an original appointment shall be at the rate designated under the first step. After a person completes 13 full bi-weekly pay periods of continuous full-time service in the same classification at the first or second step, he or she shall advance to the next step. After he or she has completed 26 full bi-weekly pay periods

of continuous service in the same classification at the third or fourth step, he or she shall advance to the next step.

(b) The anniversary date of an employee shall always be the first day of a bi-weekly pay period. For purposes of determining effective dates of advancement to higher steps, the anniversary date of a person shall be the first day of the bi-weekly pay period the appointment is effective, provided that the appointment is effective in the first five calendar days of that pay period, excluding holidays; otherwise, the anniversary date shall be the first day of the succeeding bi-weekly pay period.

(c) Where the schedule of steps shown for a classification begins at step 2, 3, or 4, the rate of compensation in case of an original appointment shall be at the rate designated under the 2nd, 3rd, or 4th step, respectively, after which further increments shall be received as set forth in subdivision (a). An initial appointment to a professional, technical, or administrative classification may be made at any step in the salary range for that classification, provided the request of the department head is in accordance with established criteria and has been authorized by the county administrator and director of personnel and labor relations.

SEC. 9. Section 73084.3 of the Government Code is amended to read:

73084.3. The clerk and administrative officer of the municipal court for the Oakland-Piedmont-Emeryville Judicial District may appoint the following deputy clerks:

(a) One chief deputy clerk.

(b) Three deputy clerks, division chiefs. The clerk and administrative officer may transfer the division chiefs from one division to another regardless of any resulting change in salary as set forth in Section 73086.

(c) Four deputy clerks, assistant division chiefs.

(d) One deputy clerk, calendar coordinator.

(e) Six deputy clerks, supervising municipal court clerk II.

(f) Eighteen deputy clerks, municipal courtroom clerk.

(g) Four deputy clerks, supervising municipal court clerk I.

(h) Eight deputy clerks, senior municipal court clerk.

(i) Fifty-eight deputy clerks, municipal court clerk.

(j) Ten clerks, clerk II.

(k) One deputy clerk, supervising secretary II.

(*l*) Two deputy clerks, secretary II.

(m) Eight deputy clerks, data input clerk.

(n) Two deputy clerks, pretrial specialist.

(o) One deputy clerk, management specialist.

(p) Two deputy clerks, financial hearing officers.

(q) One deputy clerk, systems analyst.

(r) Eight court reporters.

(s) One deputy clerk, court training officer.

(t) One deputy clerk, information systems director.

(u) One deputy clerk, information systems analyst.
(v) One deputy clerk, information systems specialist.
Not more than eight such deputy clerks may be assigned as court interpreters at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 10. Section 73084.4 of the Government Code is amended to read:

73084.4. The clerk and court administrator of the municipal court for the San Leandro-Hayward Judicial District may appoint the following deputy clerks:
(a) One assistant clerk and court administrator.
(b) Five deputy clerks, division chiefs. The clerk and court administrator may transfer the division chiefs from one division to another regardless of any resulting change in salary as set forth in Section 73086.
(c) Nine deputy clerks, municipal courtroom clerk.
(d) Five deputy clerks, supervising municipal court clerk I.
(e) Three deputy clerks, senior municipal court clerk.
(f) Thirty-nine deputy clerks, municipal court clerk.
(g) One deputy clerk, supply clerk II.
(h) One deputy clerk, supervising secretary II.
(i) One deputy clerk, secretary II.
(j) One deputy clerk, accounting specialist.
(k) One deputy clerk, court attendant.
(*l*) Two deputy clerks, financial hearing officer.
(m) One deputy clerk, information systems analyst.
Not more than five such deputy clerks may be assigned as court interpreters at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 11. Section 73084.5 of the Government Code is amended to read:

73084.5. The clerk and administrative officer of the municipal court for the Fremont-Newark-Union City Judicial District may appoint the following deputy clerks:
(a) One chief deputy clerk.
(b) Six deputy clerks, municipal courtroom clerk.
(c) Four deputy clerks, division chief.
(d) Six deputy clerks, senior municipal court clerk.
(e) Twenty-three deputy clerks, municipal court clerk.
(f) Four deputy clerks, clerk II.
(g) One deputy clerk, secretary II.
(h) One deputy clerk, supervising accountant I.
(i) Two deputy clerks, account clerk II.
(j) One deputy clerk, account clerk I.
(k) Three deputy clerks, data input clerk.
(*l*) Three deputy clerks, supervising municipal court clerk I.
(m) One deputy clerk, financial hearing officer.
(n) One deputy clerk, supervising secretary II.

(o) One deputy clerk, court attendant.
(p) One deputy clerk, pretrial specialist.
(q) One deputy clerk, information systems technician II.

Not more than five deputy clerks may be assigned as court interpreters at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 12. Section 73089 of the Government Code is amended to read:

73089. With the approval of the board of supervisors, judges of each municipal court concerned within Alameda County may establish additional titles and pay rates as are required and may appoint additional deputy clerks, officers, assistants, and other employees as deemed necessary for the powers conferred by law upon the court and its members. Rates of compensation of the clerk and administrative officers, deputy clerks, officers, assistants, and other employees may be adjusted by joint action and approval of the board of supervisors and the judges in each respective municipal court within the county.

If the board of supervisors provides by ordinance or resolution for any increase in the number or rate of compensation of any municipal court personnel pursuant to this section, that increase shall be effective only until January 1, 2000, and shall be effective at the same time and in the same manner as increases for Alameda County employees generally.

SEC. 13. Section 73096 of the Government Code is amended to read:

73096. Official reporters of municipal courts in Alameda County, in lieu of any other compensation provided by law for their services in reporting testimony and proceedings in such court, shall receive one of the following:

(a) Two hundred twenty-one dollars and ten cents ($221.10) a day for the days they actually are on duty under order of the court.

(b) A minimum payment of one hundred ten dollars and fifty-five cents ($110.55) for serving four hours or less a day.

(c) Regular official court reporters shall receive a salary, vacation leave, and sick leave, in the same amounts as the official reporters of the Superior Court in Alameda County as set forth in Alameda County Salary Ordinance for item number classification 1625.

Rates of compensation of regular official reporters and official reporters pro tempore may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court, provided, however, that any changes in compensation which are made pursuant to this section shall be on an interim basis and shall remain in effect only until January 1, 2000, unless ratified by statute by the Legislature prior to that date.

SEC. 14. Section 73096.1 of the Government Code is amended to read:

73096.1. The judges of each municipal court district set forth below may appoint the following number of regular official reporters:

Alameda Judicial District	1
Berkeley–Albany Judicial District	4
Oakland–Piedmont–Emeryville Judicial District	8
San Leandro–Hayward Judicial District	7
Fremont–Newark–Union City Judicial District	5
Livermore–Pleasanton–Dublin Judicial District	2

SEC. 15. Section 73348 of the Government Code is amended to read:

73348. (a) In Contra Costa County, the annual salary of each regular official reporter shall be based on a four-step salary plan with one-year increments. Effective July 1, 1996, the four salary steps are as follows:

Step 1. Forty-eight thousand five hundred twenty-eight dollars ($48,528).

Step 2. Fifty thousand nine hundred fifty-two dollars ($50,952).

Step 3. Fifty-three thousand five hundred eight dollars ($53,508).

Step 4. Fifty-six thousand one hundred eighty-four dollars ($56,184).

The step of entry to the above schedule shall be Step 1. However, the judges of the court may appoint a court reporter to a duly allocated exempt position at a higher step if, in the opinion of the appointing judge, an individual to be appointed has the experience and qualifications to entitle that individual to the higher initial step, and if the higher initial salary has the approval of the presiding judge of the court and the board of supervisors, but in no case may the initial salary be above the third step of the salary range. Except as provided below, official reporters shall advance to the next higher step on the salary plan annually. The compensation of each official reporter pro tempore shall be an amount which is equivalent to 1.05 times the daily wage of the fourth step in the salary range for full-time official reporters in Contra Costa County for each day the reporter actually is on duty under order of the court which per diem rate shall apply when an official reporter is appointed pursuant to Section 869 of the Penal Code.

Irrespective of the step of the salary range to which initially appointed, an official court reporter shall be eligible for advancement to the next higher step in the salary range after six months' service, and thereafter shall advance on the salary range based on annual reviews.

(b) During the hours which the court is open for the transaction of judicial business, the regular official reporter shall perform the

duties required by law. When not engaged in the performance of any other duty imposed upon him or her by law, he or she shall render stenographic or clerical assistance to the judge of the court to which he or she is assigned as the judge may direct.

(c) The board of supervisors shall adjust the salary of regular official reporters as part of its regular review of county employee compensation. The adjustment shall be to that salary level closest to the average percentage adjustment in basic salaries of the county classes of superior court clerk, legal clerk, secretary, and clerk (experienced level). The reporter salary adjustment shall be effective on the same day as the effective date of the board's action as to all of the aforesaid county classifications, but for official reporters of each municipal court district shall be effective only until January 1 of the second year following the calendar year in which the adjustment is made. The compensation of each official reporter pro tempore shall remain at the rate specified in subdivision (a) for the days he or she actually is on duty until changed by the board of supervisors at the same time and on the same basis as regular official reporters.

SEC. 16. Section 73350 of the Government Code is amended to read:

73350. Except as otherwise provided in this article, all employments of any municipal court now established or which may be established in Contra Costa County shall be compensated and receive other benefits in accordance with the salary ordinance of the county governing other county employments. Any subsequent change in benefits provided by the salary ordinance to employees of the county shall apply equally to employees of the municipal courts and shall have the same effective date. These benefits may also be retroactively applied. References hereafter to range allocation and salary steps apply to the basic salary schedule set forth in Section 73352.

Within-range step increases shall be granted only upon the affirmative recommendation of the appointing authority.

Overtime payments must bear the same approval as within-range step increases.

SEC. 17. Section 73353 of the Government Code is repealed.

SEC. 18. Section 73353 is added to the Government Code, to read:

73353. Effective July 1, 1996, 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	C5-1300	1667-2026
Deputy Clerk-Experienced Level	C5-1444	1925-2340
Deputy Clerk-Senior Level	XC-1603	2148-2743
Deputy Clerk-Specialist Level	XC-1724	2425-3097

Deputy Clerk-DEO I	C5-1367	1782-2166
Deputy Clerk-DEO II	C5-1464	1964-2387
Deputy Clerk-Courtroom Clerk	C5-1866	2935-3567
Court Operations Coordinator II	C5-2133	3832-4658
Court Operations Coordinator I	C5-2036	3478-4228
District Court Manager III	C1-2462	6472F
District Court Manager II	C5-2352	4770-5798
District Court Manager I	C5-2241	4269-5189
Court Probation Officer	C5-1977	3279-3986
Municipal Court Collection Agent	C5-1757	2632-3199
Municipal Court Computer Systems Technician	C5-1782	2698-3280
Municipal Court Accounting Specialist	XC-1804	2626-3354
Municipal Court Division Supervisor	C5-1891	3009-3657
Municipal Court Program Assistant	C5-1897	3027-3679
Municipal Court Operations and Training Manager	C5-2083	3646-4431
Municipal Court Management Analyst	C5-2157	3925-4771
Municipal Court Systems and Facilities Manager	C5-2226	4206-5112
Municipal Court Fiscal and Administrative Manager	C5-2249	4303-5231
County Municipal Court Administrator	C5-2623	6254-7602

SEC. 19. Section 73367 of the Government Code is repealed.

SEC. 20. Section 73368 of the Government Code is repealed.

SEC. 21. Section 73433 of the Government Code is amended to read:

73433. There shall be one clerk-administrator in each municipal court who shall be appointed by and serve at the pleasure of a majority of the judges of the court to which the clerk-administrator is appointed. In a court with less than three judges, the presiding judge shall appoint the clerk-administrator of the court. The clerk-administrator of the East Kern Municipal Court shall receive the biweekly salary specified in range 55.7 of the salary schedule. The clerk-administrator of the North Kern Municipal Court shall receive the biweekly salary specified in range 55.7 of the salary schedule. The clerk-administrator of the South Kern Municipal Court shall receive the biweekly salary specified in range 55.7 of the salary schedule. The clerk-administrator of the Bakersfield Municipal Court shall receive the biweekly salary specified in range 62.0 of the salary schedule.

SEC. 22. Section 73433.1 of the Government Code is amended to read:

73433.1. There shall be one assistant clerk-administrator in the Bakersfield Municipal Court who shall be appointed by and serve at the pleasure of the majority of the judges of the court. The assistant clerk-administrator shall receive the biweekly salary specified in range 55.7 of the salary schedule.

SEC. 23. Section 73433.4 of the Government Code is amended to read:

73433.4. There shall be one assistant clerk-administrator in the South Kern Municipal Court who shall be appointed by and serve at the pleasure of the majority of the judges of the court. The assistant clerk-administrator shall receive the biweekly salary specified in range 51.7 of the salary schedule.

SEC. 24. Section 73434 of the Government Code is amended to read:

73434. There shall be two judicial secretaries in the Bakersfield Municipal Court who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The judicial secretaries shall receive a biweekly salary specified in range 46.3 of the salary schedule.

SEC. 25. Section 73435 of the Government Code is amended to read:

73435. The clerk-administrator of the Bakersfield Municipal Court may appoint:

(a) Three chief deputy municipal court clerks who shall act as the supervisors of the civil, criminal, and traffic divisions of the court and each of whom shall receive the biweekly salary specified in range 50.0 of the salary schedule.

(b) Seven senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 47.9 of the salary schedule.

(c) One supervising courtroom clerk, who shall supervise the deputy municipal courtroom clerks and who shall receive the biweekly salary specified in range 51.0 of the salary schedule.

(d) One senior courtroom clerk who shall receive the biweekly salary specified in range 50.0 of the salary schedule.

(e) Eighteen deputy municipal courtroom clerks II or deputy municipal courtroom clerks I, each of whom shall receive the biweekly salary specified in ranges 47.8 and 44.2, respectively, of the salary schedule.

Deputy municipal courtroom clerk I shall be the entrance position to deputy municipal courtroom clerk II. The clerk-administrator, with the concurrence of the presiding judge, may advance any deputy municipal courtroom clerk I to the position of deputy municipal courtroom clerk II without further examination, if the deputy municipal courtroom clerk I has served for six months and otherwise meets the qualifications for deputy municipal courtroom clerk II and if the presiding judge is satisfied with the deputy

municipal courtroom clerk I's performance during the six-month period.

(f) Fifty-three full-time deputy municipal court clerks II or I, each of whom shall receive the biweekly salary specified in ranges 44.1 and 41.8, respectively, of the salary schedule.

Deputy municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any deputy municipal court clerk I to the position of deputy municipal court clerk II without further examination if the deputy municipal court clerk I has served for six months and otherwise meets the qualifications for deputy municipal court clerk II.

(g) One accountant II or I who shall receive the biweekly salary specified in ranges 51.1 and 48.4, respectively, of the salary schedule. Accountant I shall be the entrance position to the accountant series. The clerk-administrator may advance the accountant I to the position of accountant II without further examination if the accountant I has served for one year and otherwise meets the qualifications of accountant II.

(h) Two court services technicians, each of whom shall receive the biweekly salary specified in range 44.1 of the salary schedule.

(i) Two deputy administrative court clerks, each of whom shall receive the biweekly salary specified in range 43.8 of the salary schedule.

(j) One microphotographer who shall receive the biweekly salary specified in range 40.7 of the salary schedule.

(k) One administrative services officer who shall receive the biweekly salary specified in range 57.6 of the salary schedule.

(*l*) One departmental systems coordinator I who shall receive the biweekly salary specified in range 53.2 of the salary schedule.

(m) One court interpreter who shall receive the biweekly salary specified in range 44.1 of the salary schedule.

(n) One court interpreter/coordinator who shall receive the biweekly salary specified in range 47.9 of the salary schedule.

(o) One senior microphotographer who shall receive the biweekly salary specified in range 44.9 of the salary schedule.

(p) Five court reporters who shall receive the biweekly salary specified in range 55.8 of the salary schedule.

(q) One director of collections who shall receive the biweekly salary specified in range 56.8 of the salary schedule.

(r) One court technology manager who shall receive the biweekly salary specified in range 57.6 of the salary schedule.

(s) One departmental systems coordinator II who shall receive the biweekly salary specified in range 55.2 of the salary schedule.

SEC. 26. Section 73436 of the Government Code is amended to read:

73436. The clerk-administrator of the East Kern Municipal Court may appoint:

(a) Two regional chief municipal court clerks who shall act as the supervisors of the branches of the court and each of whom shall receive the biweekly salary specified in range 50.0 of the salary schedule.

(b) Six regional senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 47.9 of the salary schedule.

(c) Nineteen regional municipal court clerks III, II, or I, each of whom shall receive the biweekly salary specified in ranges 46.2, 44.1, and 41.8, respectively, of the salary schedule.

Regional municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any regional municipal court clerk I to the position of regional municipal court clerk II without further examination if the regional municipal court clerk I has served for six months and otherwise meets the qualifications for regional municipal court clerk II.

(d) One account clerk III who shall receive the biweekly salary specified in range 42.0 of the salary schedule.

(e) One court reporter who shall receive the biweekly salary specified in range 55.8 of the salary schedule.

SEC. 27. Section 73436.1 of the Government Code is amended to read:

73436.1. The clerk-administrator of the North Kern Municipal Court may appoint:

(a) Two regional chief municipal court clerks who shall act as the supervisors of the branches of the court and each of whom shall receive the biweekly salary specified in range 50.0 of the salary schedule.

(b) Two regional senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 47.9 of the salary schedule.

(c) Eighteen regional municipal court clerks III, II, or I, each of whom shall receive the biweekly salary specified in ranges 46.2, 44.1, and 41.8, respectively, of the salary schedule.

The position of regional municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any regional municipal court clerk I to the position of regional municipal court clerk II without further examination, if the regional municipal court clerk I has served for six months and otherwise meets the qualifications for regional municipal court clerk II.

(d) One court reporter who shall receive the biweekly salary specified in range 55.8 of the salary schedule.

(e) One account clerk IV who shall receive the biweekly salary specified in range 44.8 of the salary schedule.

SEC. 28. Section 73436.2 of the Government Code is amended to read:

73436.2. The clerk-administrator of the South Kern Municipal Court may appoint:

(a) One assistant clerk-administrator who shall act as the supervisor of the branches of the court and who shall receive the biweekly salary specified in range 51.7 of the salary schedule.

(b) One regional chief municipal court clerk who shall act as the supervisor of the branches of the court and who shall receive the biweekly salary specified in range 50.0 of the salary schedule.

(c) Two regional senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 47.9 of the salary schedule.

(d) Twenty-two regional municipal court clerks III, II, or I, each of whom shall receive the biweekly salary specified in ranges 46.2, 44.1, and 41.8, respectively, of the salary schedule.

The position of regional municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any regional municipal court clerk I to the position of regional municipal court clerk II without further examination, if the regional municipal court clerk I has served for six months and otherwise meets the qualifications for regional municipal court clerk II.

(e) One account clerk IV who shall receive the biweekly salary specified in range 44.8 of the salary schedule.

(f) One court interpreter who shall receive the biweekly salary specified in range 44.1 of the salary schedule.

(g) One court reporter who shall receive the biweekly salary specified in range 55.8 of the salary schedule.

SEC. 28.5. Section 73483 of the Government Code is amended to read:

73483. The clerk may appoint:

(a) Two municipal courtroom clerks.

(b) One deputy clerk III.

(c) Three deputy clerks II.

(d) Seven deputy clerks I.

(e) One deputy clerk-administrator.

SEC. 28.7. Section 73487 of the Government Code is amended to read:

73487. Persons employed in any of the positions authorized by this article shall be paid the salary assigned to the following ranges as set forth in the biweekly salary schedule contained in Section 73486, except that if the range shown opposite the title of the position includes a fraction, then the person employed in such position shall be paid a salary equal to that shown opposite said fractional range in the salary ordinance of the County of San Joaquin:

Position	Range
(a) Deputy clerk I	50.40
(b) Deputy clerk II	52.40
(c) Deputy clerk III	53.90
(d) Municipal courtroom clerk	56.90
(e) Clerk/Administrator	63.20
(f) Deputy clerk–administrator	58.10

Subject to the provisions of the salary ordinance of the County of San Joaquin, each person employed in the clerk's office may receive an annual increase in salary of one step on his or her assigned range, until the employee reaches the maximum step on the range assigned for his or her position. Thereafter no additional step increase shall be granted.

SEC. 29. 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 Court Administrative Secretary at salary range 1034.

(3) Three Senior Court Clerks at salary range 1159.

(4) Nineteen Court Clerks II at salary range 1015.

(5) Nineteen Court Clerks I at salary range 906.

(6) Five Supervising Legal Process Clerks at salary range 1299.

(7) Five Senior Legal Process Clerks at salary range 1159.

(8) Eleven Legal Process Clerks II at salary range 1015.

(9) Eleven Legal Process Clerks I at salary range 906.

(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 1151.

(14) One Senior Court Interpreter at salary range 1046.

(15) Four Court Interpreters at salary range 951.

(16) One Court Secretary III at salary range 886.

(17) One Court Secretary II at salary range 763.

(18) One Court Secretary I at salary range 693.

(19) Four Municipal Court Division Managers at salary within Band "G."

(20) One Research Attorney III at salary range 1947.

(21) One Research Attorney II at salary range 1618.

(22) One Research Attorney I at salary range 1264.

(23) Two Systems and Procedures Analysts III at salary range 1510.

(24) Two Systems and Procedures Analysts II at salary range 1303.

(25) Two Systems and Procedures Analysts I at salary range 1054.

(b) Salary ranges indicated in paragraphs (1) to (25), inclusive, of subdivision (a) are effective December 16, 1996.

(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 1015.
(2) One Court Clerk I at salary range 906.
(3) One Supervising Legal Process Clerk at salary range 1299.
(4) Five Legal Process Clerks II at salary range 1015.
(5) Five Legal Process Clerks I at salary range 906.
(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 16, 1996.

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. 30. 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	–	–	–	102411
Municipal Court Division Manager	Band G	32606	–	–	–	53943
Administrative Services Assistant	Band H	24148	–	–	–	44192
Court Administrative Secretary	1034	1034	1086	1140	1197	1257
Systems and Procedures Analyst III	1510	1510	1586	1665	1748	1835 92
Systems and Procedures Analyst II	1303	1303	1368	1436	1508	1583
Systems and Procedures Analyst I	1054	1054	1107	1162	1220	1281
Research Attorney III	1947	1947	2037	2139	2246	2358
Research Attorney II	1618	1618	1699	1784	1873	1967
Research Attorney I	1264	1264	1327	1393	1463	1536
Court Interpreting Services Coordinator	1151	1151	1209	1269	1332	1399
Senior Court Interpreter	1046	1046	1098	1153	1211	1272
Court Interpreter	951	951	999	1049	1101	1156
Court Secretary III	886	886	930	977	1026	1077
Court Secretary II	763	763	801	841	883	927
Court Secretary I	693	693	723	764	802	842
Senior Court Clerk	1159	1159	1217	1278	1342	1409
Court Clerk II	1015	1015	1066	1119	1175	1234
Court Clerk I	906	906	951	999	1049	1101
Supervising Legal Process Clerk	1299	1299	1366	1432	1504	1579
Senior Legal Process Clerk	1159	1159	1217	1278	1342	1409
Legal Process Clerk II	1015	1015	1066	1119	1175	1234
Legal Process Clerk I	906	906	951	999	1049	1101
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. 31. 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. $44,045
Step 2. $46,252
Step 3. $48,541
Step 4. $50,969

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. 32. 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-nine dollars and forty cents ($169.40) 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 twelve dollars and ninety-three cents ($112.93) 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-nine dollars and forty cents ($169.40) 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-nine dollars and forty cents ($169.40) 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. 33. 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) Nineteen 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 906 or 1015, respectively.

(3) Eight supervising legal process clerks, who shall receive a salary specified in range 1299.

(b) The court administrator may appoint any combination of legal process clerks and office assistants, not to exceed a total of 50. 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. 33.1. Section 73705 of the Government Code is amended to read:

73705. The clerk may appoint:

(a) Two junior administrative assistants.

(b) Seven deputy clerks II.

(c) Thirteen deputy clerks I.

(d) Four municipal courtroom clerks.

SEC. 33.2. Section 73710 of the Government Code is amended to read:

73710. Persons employed in any of the positions authorized by this article shall be paid the salary assigned to the following ranges as set forth in the biweekly salary schedule contained in Section 73709, except that if the range shown opposite the title of the position includes a fraction then the person employed in such position shall be paid a salary equal to that opposite that fractional range in the salary ordinance of the County of San Joaquin:

	Position	Range
(a)	Deputy clerk I	50.40
(b)	Deputy clerk II	52.40
(c)	Clerk Administrator	66.40
(d)	Junior administrative assistant	57.60
(e)	Municipal courtroom clerk	56.90

Subject to the provisions of the salary ordinance of the County of San Joaquin, each person employed in the clerk's office may receive an annual increase in salary of one step on his or her assigned range, until the employee reaches the maximum step on the range assigned

for his or her position. Thereafter, no additional step increase shall be granted.

SEC. 33.3. Section 73713 of the Government Code is amended to read:

73713. Whenever the salary of a related class or classes of San Joaquin County employees is adjusted, the salary of the following classes may be adjusted by a percentage not to exceed the percentage of adjustment granted to the class or classes deemed by the board of supervisors to be related:

(a) Deputy clerk I.
(b) Deputy clerk II.
(c) Clerk Administrator.
(d) Deputy clerk III.
(e) Junior Administrative assistant.
(f) Municipal courtroom clerk.

All adjustments to the salaries of the above-named classes shall be effective as of the same date as the adjustment for the class, or classes, deemed to be related, and shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

SEC. 33.4. Section 73757 of the Government Code is repealed.

SEC. 33.5. Section 73757 is added to the Government Code, to read:

73757. There shall be one marshal for each division within the Madera County Municipal Court District. Commencing in 1996, the marshal of each division shall be elected to a six-year term by the electors resident within that division. Any otherwise qualified candidate is eligible to be elected to any division if he or she is an elector resident within the boundary of that division. Notwithstanding any other provision of law, in the event of a vacancy in the position of marshal, an appointment to fill the unexpired term of the marshal shall be made by the board. The annual salaries for the marshals shall be as follows: Borden Division—twenty thousand five hundred twenty-eight dollars ($20,528); Chowchilla Division—eighteen thousand five hundred seventy-three dollars ($18,573); Madera Division—twenty thousand five hundred twenty-eight dollars ($20,528); Sierra Division—eighteen thousand five hundred seventy-three dollars ($18,573). Except as otherwise provided by Resolution of the Board of Supervisors, marshals and any deputy marshals shall be entitled to retain all fees paid to them for their services. Each marshal, with the approval of the board, may appoint any necessary deputy marshals and clerks. The board shall designate the positions, job titles, and salary ranges for such positions by resolution.

SEC. 33.6. Section 73759 of the Government Code is repealed.

SEC. 33.7. Section 73759 is added to the Government Code, to read:

73759. (a) Clerical employees of the district may be appointed, as follows:

(1) Borden Division:

(A) One municipal court supervisor who shall receive the salary specified in range 15.5 to increase to range 17 effective February 1, 1997.

(B) Two municipal court clerks III who shall receive the salary specified in range 12, to increase to range 13 effective April 1, 1997.

(C) Two and one-half municipal court clerks II who shall receive the salary specified in range 11, to increase to range 12 effective March 1, 1997.

(2) Chowchilla Division:

(A) One municipal court supervisor who shall receive the salary specified in range 16.5.

(B) Two municipal court clerks III's who shall receive the salary specified in range 12, to increase to range 13 effective April 1, 1997.

(C) One municipal court clerk II who shall receive the salary specified in range 11, to increase to range 12 effective March 1, 1997.

(3) Madera Division:

(A) One municipal court supervisor who shall receive the salary specified in range 15.5, to increase to range 17 effective February 1, 1997.

(B) One senior municipal court clerk who shall receive the salary specified in range 14 effective February 1, 1997.

(C) One municipal court clerk III who shall receive the salary specified in range 12, to increase to range 13, effective April 1, 1997.

(D) Eight and one-quarter municipal court clerks I or II. Municipal court clerks I shall receive the salary specified in range 8.5 to increase to 9.5 effective March 1, 1997. Municipal court clerks II shall receive the salary specified in range 11, to increase to range 12 effective March 1, 1997.

(E) One office assistant I who shall receive the salary specified in range 5.

(F) One court interpreter who shall receive the salary specified in range 34 (Table B).

(4) Sierra Division:

(A) One municipal court supervisor who shall receive the salary specified in range 15.5, to increase to range 17 effective February 1, 1997.

(B) Two municipal court clerks III who shall receive the salary specified in range 12, to increase to range 13 effective April 1, 1997.

(C) Two municipal court clerks II who shall receive the salary specified in range 11, to increase to range 12 effective March 1, 1997.

(b) Notwithstanding the provisions of Article 4 (commencing with Section 72150), and the provisions of this article, whenever the business of the district requires a greater number of employees in order to effectively carry out the duties and functions of the respective divisions, a majority of the judges of the district may, with

the approval of the board, establish new positions for officers, attachés, and employees in addition to those provided by this article. The order and approval establishing such positions shall designate the position, title, and salary range for each such position.

(c) At the request of the judges of the district, the county personnel department shall assist in the recruitment and examination of court personnel. Personnel hired or appointed as official reporters, official interpreters, staff attorneys, administrators, or other nonclerical positions on or after the effective date of this article shall serve at, and may terminated at, the pleasure of the majority of the judges of the district. Other provisions of the county civil service or personnel rules or procedures shall not be applicable to such court employees unless made applicable by local court rule. Benefits other than salary shall, for all court personnel, be the same as are now or may be hereafter be provided to equivalent county classifications, as such equivalency is determined by agreement of the majority of the judges of the district and the board, but shall not exceed those provided for equivalent county classifications. To the extent necessary, and for the sole purpose of implementing the intent of this subdivision, court employees shall be deemed county employees for inclusion in those benefit programs provided to county employees as a group or groups. All court employees, except pro tempore court reporters shall, if otherwise eligible under statutory and retirement system membership requirements, be included in the county's retirement system.

SEC. 33.8. Section 73766 of the Government Code is amended to read:

73766. Except as otherwise provided by resolution of the board or by this article, all fees collected by court officers and attachés shall be deposited in the county treasury.

SEC. 33.9. Article 12.2 (commencing with Section 73783.1) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 12.2. Mariposa County Municipal Court District

73783.1. This article applies to the municipal court established in a judicial district embracing the County of Mariposa.

73783.2. There shall be one judge.

73783.3. Facilities for the court shall be maintained at the county seat and at court facilities provided elsewhere as determined by ordinance adopted by the board of supervisors. The court shall determine the nature and frequency of sessions held at additional court locations designated by the board of supervisors. Jurors shall be drawn from the entire county.

73783.4. There shall be one municipal court clerk who shall receive the salary specified in the Mariposa County schedule of salary ranges. The municipal court judge may, in accordance with the Mariposa County employee allocation schedule, appoint the

following at the salary specified in the Mariposa County schedule of salary ranges:

Three court clerks II who shall be deputy clerks.

One part-time office assistant I.

One part-time court clerk I.

73783.5. The sheriff shall be ex officio marshal and shall act in that capacity without additional compensation. The sheriff's designated deputies shall be ex officio deputy marshals of the court.

73783.6. Whenever a reference is made to the Mariposa County schedule of salary ranges, that schedule, as it was in effect on October 1, 1996, shall apply.

In the event the board of supervisors of the County of Mariposa amends the schedule of salary ranges or adopts a new schedule which provides a change in compensation, those changes shall be effective for the municipal court employees under the article on the effective date of the action of the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the change is made.

73783.7. The officers and attachés of the municipal court shall be entitled to the same vacation, sick leave, and similar benefits and privileges as are granted to other employees of similar classifications of the County of Mariposa under ordinances and resolutions of the board of supervisors.

73783.8. If an increase in the business of the court or any other emergency requires a greater number of attachés or employees for prompt and faithful discharge of the business of the court other than the number expressly provided in this article or requires the performance of duties of positions in a class not expressly provided in this article, with the approval of the presiding judge of the court and the board of supervisors, the municipal judge may appoint in accordance with the Mariposa County employee allocation schedule as many additional attachés or employees as are needed. The additional attachés or employees shall be selected and appointed in the same manner as those for whom express provision is made, and they shall receive salary and compensation as prescribed in this article or as prescribed by ordinance or resolution of the board of supervisors for classes not expressly provided in this article.

73783.9. All matters affecting the employment of municipal court officers and attachés which are not specifically determined by this article or other provisions of state law shall be governed and regulated by the then current ordinances and resolutions of the board of supervisors of the County of Mariposa.

SEC. 34. 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 twenty-three 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) Five 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 38 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. 35. Section 74604 of the Government Code is amended to read:

74604. There shall be one clerk of the court known as the court executive officer, who shall be appointed by the presiding judge with the concurrence of a majority of the judges of the court, and shall hold office at the pleasure of the majority of the judges of the court. The monthly compensation to be paid to the court executive officer shall be range 3210, step 5, of the San Luis Obispo County Salary Table. In addition to any other duties imposed on such officer by law, the court executive officer shall have the following duties:

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

(b) To coordinate the personnel practices in compliance with rules of the court.

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

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

(e) To initiate studies and prepare appropriate recommendations and reports to the presiding judge relating to the business of the court, including, but not limited to, such matters as standardization of forms, procedures, and classification and compensation of officers and employees.

(f) 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.

(g) To serve as liaison for the court with other persons, committees, boards, groups, and associations as directed by the presiding judge.

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

SEC. 36. Section 74607 of the Government Code is amended to read:

74607. The presiding judge may make appointments to the following authorized positions:

Number	Classification	Salary Range
1	Assistant Court Executive Officer	2204
1	Calendar Coordinator	1353

2	Calendar Coordinator—1/2 time	1353
11	Municipal Court Clerk Trainee, or	1028
	Municipal Court Clerk I, or	1124
	Municipal Court Clerk II	1208
2	Municipal Court Clerk Trainee—1/2 time, or	1028
	Municipal Court Clerk I—1/2 time, or	1124
	Municipal Court Clerk II—1/2 time	1208
2	Municipal Court Account Technician	1195
1	Municipal Court Senior Account Clerk	1093
2	Municipal Court Account Clerk	0935
1	Accountant I, or	1447
	Accountant II, or	1656
	Accountant III	1997
28	Municipal Court Legal Process Clerk, or	0858
	Municipal Court Legal Process Clerk I, or	1028
	Municipal Court Legal Process Clerk II, or	1124
	Municipal Court Legal Process Clerk III	1191
2	Municipal Court Legal Process Clerk III—1/2 time	1191
3	Supervising Municipal Court Clerk	1353
1	Supervising Municipal Court Legal Process Clerk	1322
1	Administrative Services Officer I, or	1447
	Administrative Services Officer II	1656
1	Court Data Manager	2327
1	Court Automation Analyst	2327
1	Mail Clerk	0858

SEC. 37. Section 74610 of the Government Code is amended to read:

74610. (a) The positions enumerated in Sections 74604, 74607, and 74608 are deemed to be comparable in job and salary level to certain positions in the service of San Luis Obispo County. The following table sets forth the court classifications with the comparable county classifications shown opposite thereto:

Court Classification	County Classification
Court Executive Officer	Deputy County Counsel IV (Confidential)
Assistant Court Executive Officer	Administrative Analyst III

Calendar Coordinator—1/2 time	Supervising Superior Court Clerk
Calendar Coordinator	Supervising Superior Court Clerk
Municipal Court Clerk I, II	Superior Court Clerk I, II
Municipal Court Clerk Trainee	Legal Process Clerk I
Municipal Court Accounting Technician	Accounting Technician
Municipal Court Senior Account Clerk	Senior Account Clerk
Municipal Court Account Clerk	Account Clerk
Accountant I, II, III	Accountant I, II, III
Municipal Court Legal Process Clerk	Legal Process Clerk Trainee
Municipal Court Legal Process Clerk I, II, III	Legal Process Clerk I, II, III
Municipal Court Legal Process Clerk III—1/2 time	Legal Process Clerk III
Supervising Municipal Court Clerk	Supervising Superior Court Clerk
Supervising Municipal Court Legal Process Clerk	Supervising Legal Process Clerk
Administrative Services Officer I, II	Administrative Services Officer I, II
Court Data Manager	Programmer Analyst II plus 10 percent
Court Automation Analyst	Senior Programmer Analyst
Mail Clerk	Mail Clerk

In the event that the salary for any classification which is shown above is increased by the board of supervisors, a commensurate increase shall be made in the salary for the comparable court classification. Salary adjustments made pursuant to this section shall be effective the same date as the effective date of actions of the board of supervisors applicable to the respective and comparable county classifications, but shall remain effective only until January 1 of the second year following the year in which such an adjustment is made.

(b) Upon recommendation of the judges of the court, and with the approval of the board of supervisors, the court may appoint additional employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. Any appointment made pursuant to this section

shall be on an interim basis and shall expire January 1 of the second calendar year following the year in which the appointment is made unless ratified by the Legislature. This section shall not affect the application of Section 72150.

SEC. 38. 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.	413
1	Account Technician-Ct.	441
1	Business Manager II—Ct.	563
1	Assistant Clerk-Admin.Officer (SB)	564
1	Clerk-Administrative Officer (SB)	614
2	Collections Rep.-Ct.	439
2	Commissioner, Municipal Court	3,266.89/BI-WKLY
1	Court Clerk Chief-Ct.	515
2	Court Interpreter	452
1	Department Analyst—Ct.	518
1	Department DP Spec.-Ct.	497
1	EDP System & Prog. Analyst I-Ct. D	537
	OR EDP System & Prog. Analyst II-Ct. D	554
1	Exec. Secretary-Ct.	459
31	Judicial Asst. I-Ct. OR	407
	Judicial Asst. II-Ct.	428
2	Judicial Asst. I-Ct. D OR	407
	Judicial Asst. II-Ct. D	428
13	Judicial Asst. III-Ct.	452
1	Judicial Asst. III-Ct.D	452
1	Judicial Cal. Coord.-Ct.	495
5	Judicial Services Supv.-Ct.	471
1	Official Court Reporter-C	546
1	Official Court Reporter-E	546
1	Official Court Reporter-Municipal Court	538
4	Own Recognizance Officer	494
1	Own Recognizance Supervisor	514

SEC. 39. Section 74643 of the Government Code is amended to read:

74643. Within the North Santa Barbara County Municipal Court there shall be the following officers, attachés, and employees:

	North Santa Barbara County Municipal Court	Salary Range
1	Account Tech.—Ct.	441
2	Own Recognizance Officer	494
1	Own Recognizance Supervisor	514
1	Court Clerk Chief—Ct.	515
3	Court Interpreter	452
2	Department DP Specialist—Ct.	497
1	Executive Secretary—Ct.	459
26	Judicial Asst. I/II—Ct.	407/428
12	Judicial Asst. III—Ct.	452
3	Judicial Services Supv.—Ct.	471
2	Judicial Services Manager	560
1	Judicial Services Manager Senior	580
1	Traffic Referee	$2,382/BI-WKLY

SEC. 40. Section 74644 of the Government Code is repealed.

SEC. 41. Section 74644.3 of the Government Code is repealed.

SEC. 42. Section 74644.5 of the Government Code is repealed.

SEC. 43. 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 four hundred sixty-one dollars and fifty-two cents ($3,461.52) 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 45.0B, and the staff attorney shall receive a salary as specified in range 39.4A. The Santa Clara County Salary Ordinance No. NS-5.96, as amended, for the fiscal year July 1, 1996, through June 30, 1997, 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 nine hundred seventy-one dollars and eighty-four cents ($2,971.84), biweekly, plus or minus $12^1/_2$ percent.

(2) One deputy administrator/court operations who shall receive a salary as specified in range 40.1A.

(3) One deputy administrator/court services who shall receive a salary as specified in range 40.1A.

(4) One administrative services manager II who shall receive a salary as specified in range 41.6A.

(5) One departmental systems specialist II who shall receive a salary as specified in range 41.8A, 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 41.8A.

(7) Two management analysts who shall receive a salary as specified in range 37.1A, or associate management analyst B who shall receive a salary as specified in range 33.3A, or associate management analyst A who shall receive a salary as specified in range 30.2A.

(8) Two accountants III who shall receive a salary as specified in range 36.8A, or accountants II who shall receive a salary as specified in range 46.8B, or accountant/auditor appraiser who shall receive a salary as specified in range 44.0B.

(9) One accountant II who shall receive a salary as specified in range 46.8B, or accountant/auditor appraiser who shall receive a salary as specified in range 44.4B.

(10) One administrative support officer I who shall receive a salary as specified in range 34.0A.

(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 40.4B, or secretaries I who shall receive a salary as specified in range 39.2B.

(12) Two secretaries II who shall receive a salary as specified in range 40.4B, or secretaries I who shall receive a salary as specified in range 39.2B, or office clerk who shall receive a salary as specified in range 35.2B.

(13) One account clerk II who shall receive a salary as specified in range 38.6B.

(14) One municipal court division manager III who shall receive a base salary of two thousand four hundred thirty-four dollars and thirty-two cents ($2,434.32) biweekly, plus or minus $12^1/_2$ percent.

(15) Two municipal court division managers II who shall receive a base salary of two thousand two hundred forty-one dollars and sixty cents ($2,241.60) biweekly, plus or minus $12^1/_2$ percent.

(16) Three municipal court division managers I who shall receive a base salary of two thousand one hundred three dollars and seventy-six cents ($2,103.76) biweekly, plus or minus $12^1/_2$ percent.

(17) Three and one-half chief deputy court clerks I who shall receive a salary as specified in range 35.9A.

(18) Thirteen supervising deputy court clerks II who shall receive a salary as specified in range 33.9A.

(19) Four supervising deputy court clerks I who shall receive a salary as specified in range 32.1A.

(20) Ten assistant supervising deputy court clerks who shall receive a salary as specified in range 31.1A.

(21) Sixty-two municipal courtroom clerks who shall receive a salary as specified in range 44.4K.

(22) Two hundred four and one-half deputy court clerks II who shall receive a salary as specified in range 42.1B or deputy court clerks I who shall receive a salary as specified in range 35.9B.

(23) Two court services coordinators who shall receive a salary as specified in range 33.0A.

(24) Seven accountant assistants who shall receive a salary as specified in range 40.5B.

(25) One security guard who shall receive a salary as specified in range 39.1B.

(26) One stock clerk who shall receive a salary as specified in range 36.5B.

(27) One messenger-driver who shall receive a salary as specified in range 36.8B.

(28) Thirty-four municipal court court reporters (unclassified) who shall receive a salary as specified in range 51.5K.

SEC. 44. 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 eleven dollars and fifty-one cents ($111.51) per half day and two hundred twenty-three dollars and one cent ($223.01) 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. 44.1. 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-four 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 adviser or deputy clerk-small claims counsel, as the case may be. The deputy clerk-small claims adviser 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) Two 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, 1998, shall serve at the pleasure of the court administrator. A 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 the County of San Diego. 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.

(w) 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 (v), 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. 44.5. Section 74803 of the Government Code is amended to read:

74803. The clerk may appoint:

(a) One courtroom calendar coordinator.

(b) Twelve municipal courtroom clerks.

(c) Four deputy clerks III.

(d) Two judicial secretaries.

(e) Four deputy clerks II.
(f) Thirty-nine deputy clerks I.
(g) One accounting technician II.
(h) One administrative assistant I.
(i) One assistant clerk-administrator.
(j) Two court reporters.
(k) One office systems analyst.

SEC. 44.6. Section 74805 of the Government Code is amended to read:

74805. The marshal may appoint:
(a) Five marshal sergeants.
(b) Twenty-one deputy marshals.
(c) Four office assistants III.

SEC. 44.7. Section 74807 of the Government Code is amended to read:

74807. Persons employed in any of the positions authorized by this article shall be paid the salary assigned to the following ranges as set forth in the biweekly salary schedule contained in Section 74806, except that if the range shown opposite the title of the position includes a fraction then the person employed in such position shall be paid a salary equal to that shown opposite said fractional range in the salary ordinance of the County of San Joaquin:

	Position	Range
(a)	Deputy clerk I	50.40
(b)	Deputy clerk II	52.40
(c)	Deputy clerk III	53.90
(d)	Judicial secretary	54.60
(e)	Municipal courtroom clerk	56.90
(f)	Clerk/Administrator	71.00
(g)	Deputy marshal	60.70
(h)	Marshal sergeant	63.00
(i)	Courtroom calendar coordinator	58.90
(j)	Accounting technician II	56.10
(k)	Administrative assistant I	59.60
(*l*)	Assistant clerk administrator	61.30
(m)	Office assistant III	51.40
(n)	Court reporter	64.10
(o)	Office systems analyst	58.90

Subject to the provisions of the salary ordinance of the County of San Joaquin, each person employed in the clerk's office or the marshal's office may receive an annual increase in salary of one step on his or her assigned range until the employee reaches the

maximum step on the range assigned for his or her position. Thereafter no additional step increase shall be granted.

SEC. 44.8. Section 74808 of the Government Code is amended to read:

74808. Whenever the salary of a related class or classes of San Joaquin County employees is adjusted, the salary of the following classes may be adjusted by a percentage not to exceed the percentage of adjustment granted to the class or classes deemed by the board of supervisors to be related:

(a) Deputy clerk I.
(b) Deputy clerk II.
(c) Deputy clerk III.
(d) Judicial secretary.
(e) Municipal courtroom clerks.
(f) Clerk/Administrator.
(g) Courtroom calendar coordinator.
(h) Deputy marshal.
(i) Marshal sergeant.
(j) Accounting technician II.
(k) Administrative assistant I.
(*l*) Assistant clerk administrator.
(m) Office assistant III.
(n) Court reporter.
(o) Office systems analyst.

All adjustments to the salaries of the above-named classes shall be effective as of the same date as the adjustment for the class, or classes, deemed to be related, and shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless earlier ratified by the Legislature.

SEC. 44.9. Section 74811 of the Government Code is amended to read:

74811. Whenever any person occupying the position of office assistant III in the office of the marshal performs the duties of a matron in that office, her salary shall be increased by a sum equivalent to $2^1/_2$ percent of the salary otherwise payable during the period of the performance of such duties.

SEC. 45. Section 74949.1 of the Government Code is repealed.

SEC. 46. Section 74949.1 is added to the Government Code, to read:

74949.1. (a) In Napa County the judges of the superior and municipal courts, by majority vote, may appoint two full-time court commissioners to be shared by the courts, who shall hold office at the pleasure of the judges making the appointment, and shall possess the same qualifications as are required of a judge of a superior court. Within the jurisdiction of the respective courts, and to the extent the judges so direct, the shared court commissioner shall exercise the same powers and perform the same duties as a judge of the municipal court with respect to any infractions or small claims actions; shall

exercise all other powers and perform all other duties of a municipal court commissioner that may be prescribed by law; shall act, notwithstanding the provisions of Section 72400, as a traffic referee, having the powers and duties specified in Article 9 (commencing with Section 72400) of Chapter 8; shall have the powers and perform the duties of a superior court commissioner specified in Section 259 of the Code of Civil Procedure; shall have the powers and perform the duties of a probate commissioner specified in Section 69897; if and when appointed by the presiding judge of the juvenile court to do so, shall have the powers and perform the duties of a juvenile court referee as specified in Section 248 of the Welfare and Institutions Code; shall have the powers and perform the duties of child support commissioners pursuant to Sections 4252 and 4351 of the Family Code; and shall be ex officio deputy clerks of the courts.

(b) The salary of these shared court commissioners for all duties performed pursuant to this section shall be set by the board of supervisors, in an amount not to exceed 85 percent of the annual salary of a superior court judge. In addition to this salary, the shared court commissioners shall be entitled to and shall receive fringe benefits and travel expense reimbursement on the same basis as full-time employees of the superior court, other than the court executive officer. The shared court commissioners shall observe the same holidays as other full-time court employees. The shared court commissioners shall not engage in the private practice of the law.

(c) The judges and court executive officer of the Napa municipal and superior courts shall periodically review the performance of the shared court commissioners and shall maintain an ongoing training program to maintain the skills of the commissioners.

(d) The shared court commissioner positions authorized by this section shall be in lieu of any court commissioner positions authorized by Section 70141.

SEC. 47. Article 41 (commencing with Section 74993) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 41. Tuolumne County

74993. This article applies to the Tuolumne County Municipal Court District which supersedes the Central and West Justice Court District and embraces the entire County of Tuolumne.

74994. There are two judges of the Tuolumne County Municipal Court District.

74995. The Sheriff of the County of Tuolumne and his or her deputies specifically designated by him or her shall be ex officio marshals and deputy marshals, respectively, of the Tuolumne County Municipal Court and shall act as such without additional compensation.

74996. The employees of the Tuolumne County Municipal Court District shall be entitled to the same benefits and privileges as are

granted to other employees of the County of Tuolumne, as provided by the county's ordinances, resolutions, memoranda of understanding, and rules applicable to other county employees.

74997. The employees of the Tuolumne County Municipal Court shall be governed by the personnel regulations, memoranda of understanding, and policies of the County of Tuolumne.

SEC. 48. Section 11205 of the Vehicle Code, as amended by Section 1 of Chapter 58 of the Statutes of 1994, is amended to read:

11205. (a) The department shall publish a traffic violator school referral list of all the approved locations of traffic violator school classes, by school name, to be transmitted to each municipal and justice court in the state in sufficient quantity to allow the courts to provide a copy to each person referred to traffic violator school. The list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. It shall include all of the following:

(1) The name of each traffic violator school or, pursuant to subdivision (d), the general term "traffic violator school" followed by its traffic violator school license number.

(2) A phone number used for student information.

(3) The county and the judicial district.

(4) The cities where classes are available.

(b) Each traffic violator school owner shall be permitted one school name in a judicial district.

(c) The list shall be organized alphabetically in sections for each county and subsections for each judicial district within the county. The order of the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) On the list prepared by the department under subdivision (c), each traffic violator school shall appear by name unless a court determines, pursuant to subdivision (e), that a name is inappropriate and directs the department to delete the name and instead list the school by the term "traffic violator school" followed by its license number. The deletion of the name of a school from the list for a judicial district shall not affect whether that school appears by name on the list for any other judicial district within the state. In making a determination under this subdivision regarding the deletion of a name from the list, the court shall use as its criteria whether the name is misleading to the public, undignified, or implies that the school offers inducements or premiums which derogate or distort the instructional intent of the traffic safety program.

(e) When the department transmits any referral list to each municipal and justice court pursuant to subdivision (a), each municipal and justice court shall do all of the following:

(1) Within 30 days of receipt of the list, notify the school owner of any school name that the court intends to remove from the referral list.

(2) Within 60 days of receipt of the list, make every effort to schedule, conduct, and complete a hearing for the school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) Within 10 days of the completion of that hearing, notify the department and school owner of any school names it intends to remove from the referral list.

(f) In order for a court action to delete a school name from the next referral list published by the department, the department shall receive court notification no later than 90 days prior to publication of the next referral list and, absent a direct order by a superior court or court of higher jurisdiction, the department shall not fail to publish a referral list on the grounds that there exists pending litigation or appeals concerning the lists.

(g) Any court notifying the department of a school name it intends to remove from the list, pursuant to this section, shall provide the school owner with the name of the judge making those findings.

(h) When a court informs a school owner, pursuant to subdivision (e), of its decision to delete the name of a traffic violator school from that judicial district's subsection of the department's traffic violator school referral list, the owner may, on a form approved by the department, submit a substitute name to the court and request approval of that name. The court shall, within 30 days of receipt of the request for approval of the substitute name, inform the department and the school owner, on a form approved by the department, of its approval or rejection of the substitute name. The school owner may continue this appeal process for approval of a substitute name until the court determines that the name does not violate the standard set forth in subdivision (d). A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. The department shall not impose any fee or license requirement under this subdivision.

(i) If a court fails to act within 30 days on a request of a traffic violator school owner, pursuant to subdivision (h), the proposed substitute name shall be deemed approved by the court for the purposes of the traffic violator school referral list.

(j) (1) Every application filed with the department on and after June 1, 1991, for an original license by a traffic school owner or for approval to conduct classes in a judicial district not previously approved, shall be accompanied by the approval of the court in each judicial district proposed for those operations of the name of the school, on a form approved by the department for that purpose. For the approved name to be included in the traffic violator school referral list, the form shall be received by the department no later than 90 days prior to publication.

(2) When a court disapproves a school name pursuant to this subdivision, the court shall notify the school owner within 30 days of its disapproval and schedule a hearing for that school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) The court shall make every effort to schedule, conduct, and complete a hearing within 60 days of receipt of the school owner's request for a school name approval. A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. A change in physical location by a school within a judicial district shall not require approval pursuant to this subdivision.

(k) The department shall publish a list of the owners of traffic violator schools. One copy shall be provided to each municipal and justice court in the state. This list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. This list shall include all of the following:

(1) The name of each school, grouped by owner.

(2) The business office address.

(3) The business office telephone number.

(4) The license number.

(5) The owner's name.

(6) The operator's name.

(*l*) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current list of traffic violator schools published by the department when it orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location situated within the judicial districts in which that agency provides services to the courts and is represented on its referral list. The monitoring shall occur at least once every 90 days with reports forwarded to the department and the respective courts on a monthly basis.

(m) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the agency or five dollars ($5), whichever is less.

(n) If any provision of subdivision (d) or (e), as added by Section 4 of Assembly Bill 185 of the 1991–92 Regular Session, or the application thereof to any person, is held to be unconstitutional, this

section is repealed on the date the decision of the court so holding becomes final.

SEC. 48.5. Section 11205 of the Vehicle Code, as amended by Section 2 of Chapter 58 of the Statutes of 1995, is amended to read:

11205. (a) The department shall publish semiannually, or more often as necessary to serve the purposes of this act, a list of all traffic violator schools which are licensed pursuant to this section. The list shall identify classroom facilities within a judicial district that are at a different location from a licensed school's principal facility. The department shall transmit the list to each municipal and justice court with a sufficient number of copies to allow the courts to provide one copy to each person referred to a licensed traffic violator school. The department shall, at least semiannually, revise the list to ensure that each court has a current list of all licensed traffic violator schools.

(b) Each licensed traffic violator school owner shall be permitted one school name per judicial district.

(c) The referral list shall be organized alphabetically, in sections for each county, and contain subsections for each judicial district within the county. The order of the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current referral list of traffic violator schools published by the department when it orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location situated within the judicial districts in which that agency provides services to the courts and is represented on its referral list. The monitoring shall occur at least once every 90 days with reports forwarded to the department and the respective courts on a monthly basis.

(e) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the agency or five dollars ($5), whichever is less.

(f) If any provision of subdivision (d) or (e) of Section 11205, as added by Section 4 of Assembly Bill 185 of the 1991–92 Regular Session, or the application thereof to any person, is held to be unconstitutional, that Section 11205 is repealed on the date the decision of the court so holding becomes final, and on that date, this section shall become operative.

SEC. 49. Section 1430 of the Welfare and Institutions Code is amended to read:

1430. (a) Every pilot and demonstration project under this part shall include a research component requiring a longitudinal study of a percentage of the families served at each FAIR center, and an evaluation of program components and their effectiveness in addressing and meeting FAIR center goals.

(b) Each FAIR center shall maintain case records containing information relating to each family served, and shall adhere to standards of confidentiality and preservation of records as specified in the request for proposals. However, five years after the termination of a family's case, the records shall be destroyed.

(c) Each FAIR center shall adhere to standards of confidentiality set forth in Section 18986.46 for multidisciplinary services teams.

(d) Continuous and longitudinal evaluation of the benefits and costs of the pilot projects shall be made by a research and evaluation advisory panel appointed by the Judicial Council.

(e) Not later than July 1, 1998, the Judicial Council shall report to the Legislature on the result of each of the pilot and demonstration projects. The report shall include the evaluations of the research and evaluation advisory panel, recommendations as to whether the techniques utilized in the pilot and demonstration projects should be required or encouraged on a statewide basis, and how any expenses related to the changes should be financed. Recommended changes in the law should be included in the report.

SEC. 50. Section 1440 of the Welfare and Institutions Code is amended to read:

1440. This part shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that date.

SEC. 51. 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 572

An act to amend Section 24216 of, and to add Section 22112.6 to, the Education Code, relating to school employees.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 22112.6 is added to the Education Code, to read:

22112.6. Notwithstanding Section 22112.5, any county office of education that, prior to January 1, 1997, operated a special education program for up to 225 days, and changes that program to a regular school year of not less than 180 school days with an extended year of not more than 45 days effective July 1, 1998, may consider days of service in defining not more than two classes of employees, subject to the following:

(a) Members employed in the 225-day program prior to October 1, 1997, may remain in a class of employees for whom full-time service is 216 days per year.

(b) Any of those members may elect to belong to a second class of employees for whom full-time service is fewer than 216 days per year, but not less than the minimum standard specified in paragraph (1) of subdivision (b) of Section 22138.5, if both of the following conditions exist:

(1) The election is made on or before June 30, 1998, and is effective July 1, 1998.

(2) The election is nonrevocable.

(c) All certificated employees hired on or after October 1, 1997, shall belong to the class of employees specified in subdivision (b).

(d) This section shall not apply to certificated employees whose base year is determined pursuant to subparagraph (A) or (B) of paragraph (2) of subdivision (b) of Section 22138.5.

SEC. 2. Section 24216 of the Education Code is amended to read:

24216. (a) (1) A member retired for service who is appointed as a trustee or administrator by the Superintendent of Public Instruction pursuant to Section 41320.1, or a member retired for service who is assigned by a county superintendent of schools pursuant to Article 2 (commencing with Section 42120) of Chapter 6 of Part 24, shall be exempt from subdivisions (d), (e) and (f) of Section 24214 for a maximum period of two years.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d), (e) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system providing that the Superintendent of Public Instruction or the county superintendent of schools submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(b) (1) A member retired for service who is employed by an employer to perform creditable service in an emergency situation to fill a vacant administrative position requiring highly specialized skills shall be exempt from the provisions of subdivisions (d), (e) and (f) of Section 24214 for creditable service performed up to one-half of the full-time equivalent for that position, if the vacancy occurred due to circumstances beyond the control of the employer. The limitation specified in subdivisions (d), (e) and (f) of Section 24214 shall apply to creditable service performed beyond the specified exemption.

(2) An exemption under this subdivision shall be granted by the system subject to the following conditions:

(A) The recruitment process to fill the vacancy on a permanent basis is expected to extend over several months.

(B) The employment is reported in a public meeting of the governing body.

(C) The employer submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(c) This section shall not apply to any person who has received additional service credit pursuant to Section 22715 or 22716.

(d) A person who has received additional service credit pursuant to Section 22714 shall be ineligible for one year from the effective date of retirement for the exemption provided in this section for work performed in the district from which he or she retired.

(e) This section shall become operative on July 1, 1995, and shall remain in effect only until July 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2000, deletes or extends that date.

CHAPTER 573

An act to amend, repeal, and add Section 115800 of the Health and Safety Code, relating to liability.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 115800 of the Health and Safety Code is amended to read:

115800. (a) No operator of a skateboard park shall permit any person to ride a skateboard therein, unless that person is wearing a helmet, elbow pads, and knee pads.

(b) With respect to any facility, owned or operated by a local public agency, that is designed and maintained for the purpose of recreational skateboard use, and that is not supervised on a regular basis, the requirements of subdivision (a) may be satisfied by compliance with the following:

(1) Adoption by the local public agency of an ordinance requiring any person riding a skateboard at the facility to wear a helmet, elbow pads, and knee pads.

(2) The posting of signs at the facility affording reasonable notice that any person riding a skateboard in the facility must wear a helmet, elbow pads, and knee pads, and that any person failing to do so will be subject to citation under the ordinance required by paragraph (1).

(c) "Local public agency" for purposes of this section includes, but is not limited to, a city, county, or city and county.

(d) (1) Skateboarding at any facility or park owned or operated by a public entity as a public skateboard park, as provided in paragraph (3), shall be deemed a hazardous recreational activity within the meaning of Section 831.7 of the Government Code if all of the following conditions are met:

(A) The person skateboarding is 14 years of age or older.

(B) The skateboarding activity that caused the injury was stunt, trick, or luge skateboarding.

(C) The skateboard park is on public property that complies with subdivision (a) or (b).

(2) In addition to the provisions of subdivision (c) of Section 831.7 of the Government Code, nothing in this section is intended to limit the liability of a public entity with respect to any other duty imposed pursuant to existing law, including the duty to protect against dangerous conditions of public property pursuant to Chapter 2 (commencing with Section 830) of Part 2 of Division 3.6 of Title 1 of the Government Code.

(3) For public skateboard parks that were constructed on or before January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998, and before January 1, 2001. For public skateboard parks that are constructed after January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998, and before January 1, 2003. For purposes of this subdivision, any skateboard facility that is a movable facility shall be deemed constructed on the first date it is initially made available for use at any location by the local public agency.

(4) The appropriate local public agency shall maintain a record of all known or reported injuries incurred by a skateboarder in a public skateboard park or facility. The local public agency shall also maintain a record of all claims, paid and not paid, including any

lawsuits and their results, arising from those incidents that were filed against the public agency. Beginning in 1999, copies of these records shall be filed annually, no later than January 30 each year, with the Judicial Council, which shall submit a report to the Legislature on or before March 31, 2000, on the incidences of injuries incurred, claims asserted, and the results of any lawsuit filed, by persons injured while skateboarding in public skateboard parks or facilities.

(5) This subdivision shall not apply on or after January 1, 2001, to public skateboard parks that were constructed on or before January 1, 1998, but shall continue to apply to public skateboard parks that are constructed after January 1, 1998.

(e) This section shall remain in effect until January 1, 2003, and as of that date is repealed, unless a later enacted statute, enacted before January 1, 2003, deletes or extends that date.

SEC. 2. Section 115800 is added to the Health and Safety Code, to read:

115800. (a) No operator of a skateboard park shall permit any person to ride a skateboard therein, unless that person is wearing a helmet, elbow pads, and knee pads.

(b) With respect to any facility, owned or operated by a local public agency, that is designed and maintained for the purpose of recreational skateboard use, and that is not supervised on a regular basis, the requirements of subdivision (a) may be satisfied by compliance with the following:

(1) Adoption by the local public agency of an ordinance requiring any person riding a skateboard at the facility to wear a helmet, elbow pads, and knee pads.

(2) The posting of signs at the facility affording reasonable notice that any person riding a skateboard in the facility must wear a helmet, elbow pads, and knee pads, and that any person failing to do so will be subject to citation under the ordinance required by paragraph (1).

(c) "Local public agency" for purposes of this section includes, but is not limited to, a city, county, or city and county.

(d) This section shall become operative on January 1, 2003.

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 574

An act to amend Sections 8956, 86103, and 86106 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 8956 of the Government Code is amended to read:

8956. (a) The appropriate legislative ethics committees shall conduct at least semiannually an orientation course of the relevant statutes and regulations governing official conduct. The curriculum and presentation of the course shall be established by house rules.

(b) The committees shall conduct at least semiannually an orientation course on the relevant ethical issues and laws relating to lobbying, in consultation with the Fair Political Practices Commission. One of the semiannual courses shall be held prior to June 30 of each year. This course may be combined with the course described in subdivision (a).

(c) At least once in each biennial session, each Member of the Legislature and each designated employee of the Legislature shall attend one of these courses.

(d) The committees shall impose fees on lobbyists for attending the course described in subdivision (b). The fees shall be set at an amount that will enable the lobbyists' participation in the course to be funded from those fees to the fullest extent possible.

SEC. 2. Section 86103 of the Government Code is amended to read:

86103. A lobbyist certification shall include all of the following:

(a) A recent photograph of the lobbyist, the size of which shall be prescribed by the Secretary of State.

(b) The full name, business address, and telephone number of the lobbyist.

(c) A statement that the lobbyist has read and understands the prohibitions contained in Sections 86203 and 86205.

(d) (1) In the case of a lobbyist who filed a completed lobbyist certification in connection with the last regular session of the Legislature, a statement that the lobbyist has completed, within the previous 12 months or will complete no later than June 30 of the following year, the course described in subdivision (b) of Section 8956. If the lobbyist certification states that the lobbyist will complete the course no later than June 30 of the following year, the certification shall be accepted on a conditional basis. Thereafter, if the lobbyist completes the course no later than June 30 of the following year, the lobbyist shall file a new lobbyist certification with the Secretary of

State which shall replace the conditional lobbyist certification previously filed. If the lobbyist certification states that the lobbyist will complete the course no later than June 30 of the following year and the lobbyist fails to do so, the conditional lobbyist certification shall be void and the individual shall not act as a lobbyist pursuant to this title until he or she has completed the course and filed with the Secretary of State a lobbyist certification stating that he or she has completed the course and the date of completion. It shall be a violation of this section for any individual to act as a lobbyist pursuant to this title once his or her conditional certification is void.

(2) If, in the case of a new lobbyist certification, the lobbyist has not completed the course within the previous 12 months, the lobbyist certification shall include a statement that the lobbyist will complete a scheduled course within 12 months, and the lobbyist certification shall be accepted on a conditional basis. Following the lobbyist's completion of the ethics course, the lobbyist shall file a new lobbyist certification with the Secretary of State which shall replace the conditional lobbyist certification previously filed. If the new lobbyist certification states that the lobbyist will complete the course within 12 months and the lobbyist fails to do so, the conditional lobbyist certification shall be void and the individual shall not act as a lobbyist pursuant to this title until he or she has completed the course and filed with the Secretary of State a lobbyist certification stating he or she has completed the course and the date of completion. It shall be a violation of this section for any individual to act as a lobbyist pursuant to this title once his or her conditional certification is void.

(e) Any other information required by the commission consistent with the purposes and provisions of this chapter.

SEC. 3. Section 86106 of the Government Code is amended to read:

86106. Each registered lobbying firm and lobbyist employer which will be conducting activities which require registration shall renew its registration by filing photographs of its lobbyists, authorizations, and a registration statement between November 1 and December 31, of each even-numbered year. Each lobbyist shall renew his or her lobbyist certification in connection with the renewal of registration by the lobbyist's lobbying firm or employer.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

SEC. 5. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 575

An act to add Chapter 7 (commencing with Section 66500) to Part 40 of, and to add Chapter 1 (commencing with Section 69400) to Part 42 of, the Education Code, relating to postsecondary education.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. The Legislature recognizes that failing to register in accordance with the federal Military Selective Service Act (50 U.S.C. App. 451 et seq.) is a felony under federal law.

SEC. 2. Chapter 7 (commencing with Section 66500) is added to Part 40 of the Education Code, to read:

CHAPTER 7. SELECTIVE SERVICE REGISTRATION

66500. Each public postsecondary educational institution shall make every reasonable effort to inform all male applicants for undergraduate admission of their obligation to register in accordance with the federal Military Selective Service Act (50 U.S.C. App. 451 et seq.) through one or more means, as determined by each institution. This effort may include, but is not limited to, all of the following:

(a) Including a Federal Application For Student Aid form in application or registration materials.

(b) Including referral information to the Selective Service Agency or its homepage in written documents, such as an application, or electronic communications, such as a homepage or an electronically mailed application.

(c) Placing selective service registration cards in admissions offices, or other appropriate administrative offices.

SEC. 3. Chapter 1 (commencing with Section 69400) is added to Part 42 of the Education Code, to read:

CHAPTER 1. SELECTIVE SERVICE REGISTRATION

69400. No person subject to the federal Military Selective Service Act (50 U.S.C. App. 451 et seq.) shall receive any financial aid

pursuant to this part if that person has not registered in accordance with that act.

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

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

CHAPTER 576

An act to amend Sections 10511, 10512, and 10513 of the Public Contract Code, relating to state contracts.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 10511 of the Public Contract Code is amended to read:

10511. (a) (1) The Regents of the University of California shall give public notice to bidders of the sale of University of California real property situated in California if the estimated value of the real property to be sold exceeds the amount specified in paragraph (2).

(2) Paragraph (1) shall apply to real property whose estimated value exceeds five hundred thousand dollars ($500,000) net to the seller.

(b) Notice of the sale of real property shall be by publication a minimum of six times, between 2 and 12 weeks preceding the day set for receiving bids, as follows:

(1) A minimum of three times in at least one newspaper of general circulation in the county in which the property is situated.

(2) At least three times in a newspaper of general circulation in the City of Los Angeles, the City of San Diego, the City of San Francisco, or the City of Sacramento, whichever is deemed most appropriate by the regents.

(3) The published notices shall specify the general description of the property, the source for bid materials and information, and the date and place for the receiving of sealed bids.

SEC. 2. Section 10512 of the Public Contract Code is amended to read:

10512. (a) On the date designated in the public notice, the sealed bids shall be publicly opened.

(b) (1) The regents shall accept in public the bid that offers the combination of price and terms which it deems to be in the best interest of the university, or reject all bids.

(2) If a successful bidder fails to perform in the manner specified, the regents may, at their sole option and without further notice, accept, from those remaining bids submitted and opened in public pursuant to subdivision (a), the bid that offers the combination of price and terms that the regents deem to be in the best interest of the university.

SEC. 3. Section 10513 of the Public Contract Code is amended to read:

10513. The publication and award procedures set forth in this article shall not be applicable to any of the following:

(a) The sale of an undivided or fractional ownership interest in real property.

(b) A sale of a right of use in real property that is less than fee ownership.

(c) A sale of real property subject to title conditions or restrictions on the university's ownership deriving from the origin of that ownership by gift, devise, or otherwise, if that sale would be inconsistent with those title conditions or restrictions.

(d) The disposition of real property acquired through exercise of a power of sale pursuant to a deed of trust, or held as an asset in the university's investment portfolio.

(e) A sale of public lands under the direction of the federal land agent.

(f) A sale to a person or entity who will dedicate the real property to public use.

(g) A sale of real property acquired after January 1, 1985, through eminent domain proceedings initiated by the Regents of the University of California. In those cases, the person from whom the property was acquired shall be notified and be accorded an exclusive opportunity for 90 days to purchase the property at its fair market value. If the person fails to undertake proceedings to purchase the property within 90 days, the procedures specified in Sections 10511 and 10512 shall then be followed in the sale of the property.

(h) An exchange to acquire real property of another person or entity for university purposes. Any exchange shall be upon terms and conditions agreed to by the exchanging parties.

CHAPTER 577

An act to amend Sections 18672, 18673, 18676, 18677, 19575, and 19683 of, and to add Section 18672.1 to, the Government Code, relating to state government.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 18672 of the Government Code is amended to read:

18672. (a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for production of documents at any reasonable time and place, provided, however, that a subpoena shall not be issued to compel attendance of any witness who does not reside within 100 miles of the place where the hearing or investigation is held unless it is shown to the satisfaction of a member of the board, the executive officer, or the person authorized to conduct the investigation or hearing, by affidavit stating the facts, that the witness is a material witness. Such a statewide subpoena shall be served at least five days prior to the date of hearing.

(b) Subpoenas and subpoenas duces tecum shall be issued by the agency or presiding officer at the request of a party.

(c) The process extends to all parts of the state and shall be served in accordance with Sections 1987 and 1988 of the Code of Civil Procedure. A subpoena or subpoena duces tecum may also be delivered by certified mail return receipt requested or by messenger. Service by messenger shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, or in person, and identifies himself or herself either by reference to date of birth and driver's license number or Department of Motor Vehicles identification number, or the sender may verify receipt of the subpoena by obtaining other identifying information from the recipient. The sender shall make a written notation of the acknowledgment. A subpoena issued and acknowledged pursuant to this section has the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt and the subpoena may so state. A party requesting a continuance based upon the failure of a witness to appear at the time and place required for the appearance or testimony pursuant to a subpoena, shall prove that the party has complied with this section. The continuance shall only be granted for a period of time that would allow personal service of the subpoena and in no event longer than that allowed by law.

(d) No witness is obliged to attend unless the witness is a resident of the state at the time of service.

(e) The custodian of documents that are the subject of a subpoena duces tecum may satisfy the subpoena by delivery of the documents or a copy of the documents, or by making the documents available for inspection or copying, together with an affidavit in compliance with Section 1561 of the Evidence Code.

SEC. 2. Section 18672.1 is added to the Government Code, to read:

18672.1. (a) A person served with a subpoena or a subpoena duces tecum may object to its terms by a motion for a protective order, including a motion to quash made orally to the board or its authorized representative or in writing.

(b) The objection shall be resolved by the board or its authorized representative on terms and conditions that he or she declares. The board or its authorized representative may make any other order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

SEC. 3. Section 18673 of the Government Code is amended to read:

18673. If a witness does not reside within 100 miles of the place where the hearing or investigation is held, is out of the state or is too infirm to attend the hearing or investigation, any party thereto at his or her own expense may cause his or her deposition to be taken.

If a "statewide" subpoena has been issued and served on a witness, his or her deposition shall not be used as evidence, but he or she shall be personally present at any hearing or investigation at which he or she is a witness. If the presence of any other witness cannot be procured at the time of the hearing or investigation, the deposition of that witness may be used in evidence by either party or the board.

SEC. 4. Section 18676 of the Government Code is amended to read:

18676. When ordered to do so, a witness shall not be excused from testifying or from producing any documentary evidence in that investigation or hearing upon the ground that the testimony or documentary evidence required of the witness may tend to incriminate or subject the witness to penalty or forfeiture, provided the witness is granted use and derivative use, or transactional immunity.

SEC. 5. Section 18677 of the Government Code is amended to read:

18677. A person who claims and is granted immunity prior to testimony or the production of books or papers, shall not be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which he or she shall, under oath, have testified or produced documentary evidence in any such hearing or investigation, except for perjury committed in so testifying.

SEC. 6. Section 19575 of the Government Code is amended to read:

19575. The employee has 30 calendar days after the effective date of the adverse action to file with the board a written answer to the notice of adverse action. The answer shall be deemed to be a denial of all of the allegations of the notice of adverse action not expressly admitted and a request for hearing or investigation as provided in this article. With the consent of the board or its authorized representative an amended answer may subsequently be filed. If the employee fails to answer within the time specified or after answer withdraws his or her appeal the adverse action taken by the appointing power shall be final. A copy of the employee's answer and of any amended answer shall promptly be given by the board to the appointing power.

SEC. 7. Section 19683 of the Government Code is amended to read:

19683. (a) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 8547.3 within 10 working days of its submission. The executive officer shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining state employee or applicant for state employment and to the appropriate supervisor, manager, or appointing authority. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply.

(b) If the findings of the executive officer set forth acts of alleged misconduct by the supervisor, manager, or appointing power, the supervisor, manager, or appointing power may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's normal rules governing appeals, hearings, investigations, and disciplinary proceedings.

(c) If, after the hearing, the State Personnel Board determines that a violation of Section 8547.3 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, restoration of lost service credit, if appropriate, and the expungement of any adverse records of the state employee or applicant for state employment who was the subject of the alleged acts of misconduct prohibited by Section 8547.3.

(d) Whenever the board determines that a manager or supervisor has violated Section 8547.3, it shall cause an entry to that effect to be made in the manager's or supervisor's official personnel records. Adverse action shall also be invoked by the appointing power against the offending manager or supervisor in accordance with Sections 8547.8 and 19572.

(e) Notwithstanding Section 8547.8, any state officer or employee filing a complaint of reprisal or retaliation pursuant to subdivision (a) also shall have previously filed a complaint of improper governmental activity with the Joint Legislative Audit Committee, pursuant to Section 8547.7.

(f) In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

CHAPTER 578

An act to amend Sections 186.9, 186.10, and 14165 of the Penal Code, relating to crimes.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 186.9 of the Penal Code is amended to read:

186.9. As used in this chapter:

(a) "Conducts" includes, but is not limited to, initiating, concluding, or participating in conducting, initiating, or concluding a transaction.

(b) "Financial institution" means, when located or doing business in this state, any national bank or banking association, state bank or banking association, commercial bank or trust company organized under the laws of the United States or any state, any private bank, industrial savings bank, savings bank or thrift institution, savings and loan association, or building and loan association organized under the laws of the United States or any state, any insured institution as defined in Section 401 of the National Housing Act (12 U.S.C. Sec. 1724(a)), any credit union organized under the laws of the United States or any state, any national banking association or corporation acting under Chapter 6 (commencing with Section 601) of Title 12 of the United States Code, any agency, agent or branch of a foreign bank, any currency dealer or exchange, any person or business engaged primarily in the cashing of checks, any person or business who regularly engages in the issuing, selling, or redeeming of traveler's checks, money orders, or similar instruments, any broker or dealer in securities registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 or with the Commissioner of Corporations under Part 3

(commencing with Section 25200) of Division 1 of Title 4 of the Corporations Code, any licensed transmitter of funds or other person or business regularly engaged in transmitting funds to a foreign nation for others, any investment banker or investment company, any insurer, any dealer in gold, silver, or platinum bullion or coins, diamonds, emeralds, rubies, or sapphires, any pawnbroker, any telegraph company, any person or business regularly engaged in the delivery, transmittal, or holding of mail or packages, any person or business that conducts a transaction involving the transfer of title to any real property, vehicle, vessel, or aircraft, any personal property broker, any person or business acting as a real property securities dealer within the meaning of Section 10237 of the Business and Professions Code, whether licensed to do so or not, any person or business acting within the meaning and scope of subdivisions (d) and (e) of Section 10131 and Section 10131.1 of the Business and Professions Code, whether licensed to do so or not, any person or business regularly engaged in gaming within the meaning and scope of Section 330, any person or business regularly engaged in pool selling or bookmaking within the meaning and scope of Section 337a, any person or business regularly engaged in horseracing whether licensed to do so or not under the Business and Professions Code, any person or business engaged in the operation of a gambling ship within the meaning and scope of Section 11317, any person or business engaged in legal gambling or gaming within the meaning and scope of subdivisions (a) and (b) of Section 19802 of the Business and Professions Code, whether registered to do so or not, and any person or business defined as a "bank," "financial agency," or "financial institution" by Section 5312 of Title 31 of the United States Code or Section 103.11 of Title 31 of the Code of Federal Regulations and any successor provisions thereto.

(c) "Transaction" includes the deposit, withdrawal, transfer, bailment, loan, pledge, payment, or exchange of currency, or a monetary instrument, as defined by subdivision (d), or the electronic, wire, magnetic, or manual transfer of funds between accounts by, through, or to, a financial institution as defined by subdivision (b).

(d) "Monetary instrument" means United States currency and coin; the currency, coin, and foreign bank drafts of any foreign country; payment warrants issued by the United States, this state, or any city, county, or city and county of this state or any other political subdivision thereof; any bank check, cashier's check, traveler's check, or money order; any personal check, stock, investment security, or negotiable instrument in bearer form or otherwise in a form in which title thereto passes upon delivery; gold, silver, or platinum bullion or coins; and diamonds, emeralds, rubies, or sapphires. Except for foreign bank drafts and federal, state, county, or city warrants, "monetary instrument" does not include personal checks made payable to the order of a named party which have not been endorsed

or which bear restrictive endorsements, and also does not include personal checks which have been endorsed by the named party and deposited by the named party into the named party's account with a financial institution.

(e) "Criminal activity" means a criminal offense punishable under the laws of this state by death or imprisonment in the state prison or from a criminal offense committed in another jurisdiction punishable under the laws of that jurisdiction by death or imprisonment for a term exceeding one year.

(f) "Foreign bank draft" means a bank draft or check issued or made out by a foreign bank, savings and loan, casa de cambio, credit union, currency dealer or exchanger, check cashing business, money transmitter, insurance company, investment or private bank, or any other foreign financial institution that provides similar financial services, on an account in the name of the foreign bank or foreign financial institution held at a bank or other financial institution located in the United States or a territory of the United States.

SEC. 1.5. Section 186.9 of the Penal Code is amended to read:

186.9. As used in this chapter:

(a) "Conducts" includes, but is not limited to, initiating, concluding, or participating in conducting, initiating, or concluding a transaction.

(b) "Financial institution" means, when located or doing business in this state, any national bank or banking association, state bank or banking association, commercial bank or trust company organized under the laws of the United States or any state, any private bank, industrial savings bank, savings bank or thrift institution, savings and loan association, or building and loan association organized under the laws of the United States or any state, any insured institution as defined in Section 401 of the National Housing Act (12 U.S.C. Sec. 1724(a)), any credit union organized under the laws of the United States or any state, any national banking association or corporation acting under Chapter 6 (commencing with Section 601) of Title 12 of the United States Code, any agency, agent or branch of a foreign bank, any currency dealer or exchange, any person or business engaged primarily in the cashing of checks, any person or business who regularly engages in the issuing, selling, or redeeming of traveler's checks, money orders, or similar instruments, any broker or dealer in securities registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 or with the Commissioner of Corporations under Part 3 (commencing with Section 25200) of Division 1 of Title 4 of the Corporations Code, any licensed transmitter of funds or other person or business regularly engaged in transmitting funds to a foreign nation for others, any investment banker or investment company, any insurer, any dealer in gold, silver, or platinum bullion or coins, diamonds, emeralds, rubies, or sapphires, any pawnbroker, any telegraph company, any person or business regularly engaged in the

delivery, transmittal, or holding of mail or packages, any person or business that conducts a transaction involving the transfer of title to any real property, vehicle, vessel, or aircraft, any personal property broker, any person or business acting as a real property securities dealer within the meaning of Section 10237 of the Business and Professions Code, whether licensed to do so or not, any person or business acting within the meaning and scope of subdivisions (d) and (e) of Section 10131 and Section 10131.1 of the Business and Professions Code, whether licensed to do so or not, any person or business regularly engaged in gaming within the meaning and scope of Section 330, any person or business regularly engaged in pool selling or bookmaking within the meaning and scope of Section 337a, any person or business regularly engaged in horseracing whether licensed to do so or not under the Business and Professions Code, any person or business engaged in the operation of a gambling ship within the meaning and scope of Section 11317, any person or business engaged in controlled gambling within the meaning and scope of subdivision (d) of Section 19805 of the Business and Professions Code, whether registered to do so or not, and any person or business defined as a "bank," "financial agency," or "financial institution" by Section 5312 of Title 31 of the United States Code or Section 103.11 of Title 31 of the Code of Federal Regulations and any successor provisions thereto.

(c) "Transaction" includes the deposit, withdrawal, transfer, bailment, loan, pledge, payment, or exchange of currency, or a monetary instrument, as defined by subdivision (d), or the electronic, wire, magnetic, or manual transfer of funds between accounts by, through, or to, a financial institution as defined by subdivision (b).

(d) "Monetary instrument" means United States currency and coin; the currency, coin, and foreign bank drafts of any foreign country; payment warrants issued by the United States, this state, or any city, county, or city and county of this state or any other political subdivision thereof; any bank check, cashier's check, traveler's check, or money order; any personal check, stock, investment security, or negotiable instrument in bearer form or otherwise in a form in which title thereto passes upon delivery; gold, silver, or platinum bullion or coins; and diamonds, emeralds, rubies, or sapphires. Except for foreign bank drafts and federal, state, county, or city warrants, "monetary instrument" does not include personal checks made payable to the order of a named party which have not been endorsed or which bear restrictive endorsements, and also does not include personal checks which have been endorsed by the named party and deposited by the named party into the named party's account with a financial institution.

(e) "Criminal activity" means a criminal offense punishable under the laws of this state by death or imprisonment in the state prison or from a criminal offense committed in another jurisdiction

punishable under the laws of that jurisdiction by death or imprisonment for a term exceeding one year.

(f) "Foreign bank draft" means a bank draft or check issued or made out by a foreign bank, savings and loan, casa de cambio, credit union, currency dealer or exchanger, check cashing business, money transmitter, insurance company, investment or private bank, or any other foreign financial institution that provides similar financial services, on an account in the name of the foreign bank or foreign financial institution held at a bank or other financial institution located in the United States or a territory of the United States.

SEC. 2. Section 186.10 of the Penal Code is amended to read:

186.10. (a) Any person who conducts or attempts to conduct a transaction or more than one transaction within a seven-day period involving a monetary instrument or instruments of a total value exceeding five thousand dollars ($5,000), or a total value exceeding twenty-five thousand dollars ($25,000) within a 30-day period, through one or more financial institutions (1) with the specific intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, or (2) knowing that the monetary instrument represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity, is guilty of the crime of money laundering. The aggregation periods do not create an obligation for financial institutions to record, report, create, or implement tracking systems or otherwise monitor transactions involving monetary instruments in any time period. In consideration of the constitutional right to counsel afforded by the Sixth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, when a case involves an attorney who accepts a fee for representing a client in a criminal investigation or proceeding, the prosecution shall additionally be required to prove that the monetary instrument was accepted by the attorney with the intent to disguise or aid in disguising the source of the funds or the nature of the criminal activity.

A violation of this section shall be punished by imprisonment in a county jail for not more than one year or in the state prison, by a fine of not more than two hundred fifty thousand dollars ($250,000) or twice the value of the property transacted, whichever is greater, or by both that imprisonment and fine. However, for a second or subsequent conviction for a violation of this section, the maximum fine that may be imposed is five hundred thousand dollars ($500,000) or five times the value of the property transacted, whichever is greater.

(b) Notwithstanding any other law, for purposes of this section, each individual transaction conducted in excess of five thousand dollars ($5,000), each series of transactions conducted within a seven-day period that total in excess of five thousand dollars ($5,000), or each series of transactions conducted within a 30-day period that

total in excess of twenty-five thousand dollars ($25,000), shall constitute a separate, punishable offense.

(c) (1) Any person who is punished under subdivision (a) by imprisonment in the state prison shall also be subject to an additional term of imprisonment in the state prison as follows:

(A) If the value of the transaction or transactions exceeds fifty thousand dollars ($50,000) but is less than one hundred fifty thousand dollars ($150,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of one year.

(B) If the value of the transaction or transactions exceeds one hundred fifty thousand dollars ($150,000) but is less than one million dollars ($1,000,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of two years.

(C) If the value of the transaction or transactions exceeds one million dollars ($1,000,000), but is less than two million five hundred thousand dollars ($2,500,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of three years.

(D) If the value of the transaction or transactions exceeds two million five hundred thousand dollars ($2,500,000), the court, in addition to and consecutive to the felony punishment otherwise prescribed by this section, shall impose an additional term of imprisonment of four years.

(2) (A) An additional term of imprisonment as provided for in this subdivision shall not be imposed unless the facts of a transaction or transactions, or attempted transaction or transactions, of a value described in paragraph (1), are charged in the accusatory pleading, and are either admitted to by the defendant or are found to be true by the trier of fact.

(B) An additional term of imprisonment as provided for in this subdivision may be imposed with respect to an accusatory pleading charging multiple violations of this section, regardless of whether any single violation charged in that pleading involves a transaction or attempted transaction of a value covered by paragraph (1), if the violations charged in that pleading arise from a common scheme or plan and the aggregate value of the alleged transactions or attempted transactions is of a value covered by paragraph (1).

(d) All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

SEC. 3. Section 14165 of the Penal Code is amended to read:

14165. (a) The department shall analyze the reports required by Section 14162 and shall report any possible violations indicated by this analysis to the appropriate criminal justice agency.

(b) The department, in the discretion of the Attorney General, may make a report or information contained in a report filed under

Section 14162 available to a district attorney or a deputy district attorney in this state, upon request made by the district attorney or his or her designee. The report or information shall be available only for a purpose consistent with this title and subject to regulations prescribed by the Attorney General, which shall require the district attorney or his or her designee seeking the report or information contained in the report to specify in writing the specific reasons for believing that a provision of this title or Section 186.10 has been violated.

(c) The department shall destroy a report filed with it under Section 14162 at the end of the fifth calendar year after receipt of the report, unless the report or information contained in the report is known by the department to be the subject of an existing criminal proceeding or investigation.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 186.9 of the Penal Code proposed by both this bill and Senate Bill 8. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 186.9 of the Penal Code, and (3) this bill is enacted after Senate Bill 8, in which case Section 1 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 579

An act to amend Section 21655.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 21655.5 of the Vehicle Code is amended to read:

21655.5. (a) The Department of Transportation and local authorities, with respect to highways under their respective jurisdictions, may authorize or permit exclusive or preferential use of highway lanes for high-occupancy vehicles. Prior to establishing the lanes, competent engineering estimates shall be made of the effect of the lanes on safety, congestion, and highway capacity.

(b) The Department of Transportation and local authorities, with respect to highways under their respective jurisdictions, shall place and maintain, or cause to be placed and maintained, signs and other official traffic control devices to designate the exclusive or preferential lanes, to advise motorists of the applicable vehicle occupancy levels, and, except where ramp metering and bypass lanes are regulated with the activation of traffic signals, to advise motorists of the hours of high-occupancy vehicle usage. No person shall drive a vehicle upon those lanes except in conformity with the instructions imparted by the official traffic control devices. A motorcycle or a mass transit vehicle may be operated upon those exclusive or preferential use lanes unless specifically prohibited by a traffic control device.

(c) When responding to an existing emergency or breakdown in which a mass transit vehicle is blocking an exclusive or preferential use lane, a clearly marked mass transit vehicle, mass transit supervisor's vehicle, or mass transit maintenance vehicle that is responding to the emergency or breakdown may be operated in the segment of the exclusive or preferential use lane being blocked by the mass transit vehicle, regardless of the number of persons in the vehicle responding to the emergency or breakdown, if both vehicles are owned or operated by the same agency, and that agency provides public mass transit services.

(d) For purposes of this section, a "mass transit vehicle" means a transit bus regularly used to transport paying passengers in mass transit service.

(e) It is the intent of the Legislature, in amending this section, to stimulate and encourage the development of ways and means of relieving traffic congestion on California highways and, at the same time, to encourage individual citizens to pool their vehicular resources and thereby conserve fuel and lessen emission of air pollutants.

(f) The provisions of this section regarding mass transit vehicles shall only apply if the Director of Transportation determines that the application will not subject the state to a reduction in the amount of federal aid for highways.

CHAPTER 580

An act to amend Sections 8767, 8768, and 8771 of the Business and Professions Code, to amend Sections 8001, 53091, 65040.6, 65460.2, 65460.4, 65588, 66418.2, 66434, 66445, and 66452.5 of, and to amend and renumber Sections 66413.7 and 67575.9 of, the Government Code, to amend Sections 17921.7, 18901, 18922, 18923, 18944.31, 18959, 33331, 50199.50, 50199.52, 50517, and 51058 of, to amend and renumber Sections 33320.5 and 33320.7 of, to amend and renumber Article 7 (commencing with Section 33493.1 of Chapter 4.5 of Part 1 of Division 24 of, to add a heading to Article 1.5 (commencing with Section 33492.40) of Chapter 4.5 of Part 1 of Division 24 of, to repeal Sections 33320.6, 33334.18, 33492.114, 50054, 50150, 50154, 50663, 50667, 50837, 50900, 50900.1, 50901, 50902, 50908, and 51052 of, to repeal Chapter 5.5 (commencing with Section 51260) and Chapter 9 (commencing with Section 51450) of Part 3 of Division 31 of, and to repeal Part 6.1 (commencing with Section 52534) of Division 31 of, the Health and Safety Code, relating to the Housing and Land Use Omnibus Act of 1997.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. This act shall be known and may be cited as the Housing and Land Use Omnibus Act of 1997. The Legislature finds and declares that Californians desire their government to be run efficiently and economically, and that public officials should avoid waste and duplication whenever possible. The Legislature further finds and declares that it desires to control its own operating costs by reducing the number of separate bills affecting housing, land use, and related topics. Therefore, it is the intent of the Legislature in enacting this act to combine several minor, noncontroversial statutory changes relating to housing, land use, and related topics, into a single measure.

SEC. 1.1. Section 8767 of the Business and Professions Code is amended to read:

8767. If the county surveyor finds that the record of survey complies with the examination in Section 8766, the county surveyor shall endorse a statement on it of his or her examination, and shall present it to the county recorder for filing. Otherwise the county surveyor shall return it to the person who presented it, together with a written statement of the changes necessary to make it conform to the requirements of Section 8766. The licensed land surveyor or registered civil engineer submitting the record of survey may then make the agreed changes and note those matters which cannot be agreed upon in accordance with the provisions of Section 8768 and

shall resubmit the record of survey within 60 days, or within the time as may be mutually agreed upon by the licensed surveyor or registered engineer and the county surveyor, to the county surveyor for filing pursuant to Section 8768.

SEC. 1.2. Section 8768 of the Business and Professions Code is amended to read:

8768. If the matters appearing on the record of survey cannot be agreed upon by the licensed land surveyor or the registered civil engineer and the county surveyor within 10 working days after the licensed land surveyor or registered civil engineer resubmits and requests the record of survey be filed without further change, an explanation of the differences shall be noted on the map and it shall be presented by the county surveyor to the county recorder for filing, and the county recorder shall file the record of survey. The licensed land surveyor or registered civil engineer filing the record of survey shall attempt to reach agreement with the county surveyor regarding the language for the explanation of the differences. If they cannot agree on the language explaining the differences, then both shall add a notation on the record of survey explaining the differences. The explanation of the differences shall be sufficiently specific to identify the factual basis for the difference.

SEC. 1.3. Section 8771 of the Business and Professions Code is amended to read:

8771. (a) Monuments set shall be sufficient in number and durability and efficiently placed so as not to be readily disturbed, to assure, together with monuments already existing, the perpetuation or facile reestablishment of any point or line of the survey.

(b) When monuments exist that control the location of subdivisions, tracts, boundaries, roads, streets, or highways, or provide survey control, the monuments shall be located and referenced by or under the direction of a licensed land surveyor or registered civil engineer prior to the time when any streets, highways, other rights-of-way, or easements are improved, constructed, reconstructed, or relocated and a corner record or record of survey of the references shall be filed with the county surveyor. They shall be reset in the surface of the new construction, a suitable monument box placed thereon, or permanent witness monuments set to perpetuate their location and a corner record or record of survey filed with the county surveyor prior to the recording of a certificate of completion for the project. Sufficient controlling monuments shall be retained or replaced in their original positions to enable property, right-of-way and easement lines, property corners, and subdivision and tract boundaries to be reestablished without devious surveys necessarily originating on monuments differing from those that currently control the area. It shall be the responsibility of the governmental agency or others performing construction work to provide for the monumentation required by this section. It shall be the duty of every land surveyor or civil

engineer to cooperate with the governmental agency in matters of maps, field notes, and other pertinent records. Monuments set to mark the limiting lines of highways, roads, streets or right-of-way or easement lines shall not be deemed adequate for this purpose unless specifically noted on the corner record or record of survey of the improvement works with direct ties in bearing or azimuth and distance between these and other monuments of record.

(c) The decision to file a corner record or a record of survey shall be at the election of the licensed land surveyor or registered engineer submitting the document.

SEC. 1.5. Section 8001 of the Government Code is amended to read:

8001. (a) Notwithstanding any other provision of law, the following advisory bodies are hereby abolished:

(1) Law Enforcement Mutual Aid Radio System.

(2) Law Enforcement Regional Coordinator Advisory Committee.

(3) California Criminalistic Institute User.

(4) Crack Down Task Force Advisory Committee.

(5) Tear Gas Advisory Committee.

(6) Wanted Persons System Advisory Group.

(8) Contract Time Overrun and Claims Review Panel.

(9) Advanced Lighting Professional Advisory Committee.

(10) California Building Officials Advisory Group in the State Energy Resources, Conservation and Development Commission.

(11) Geothermal Development Grant Program Advisory Group.

(12) Professional Advisory Group in the State Energy Conservation and Development Commission.

(13) Technical Review Committee in the State Energy Conservation and Development Commission.

(14) Local Jurisdiction Advisory Committee.

(15) Residential Implementation Advisory Group.

(16) Forest (Coast) District, Technical Advisory Committee.

(17) Forest (Northern) District, Technical Advisory Committee.

(18) Forest (Southern) District, Technical Advisory Committee.

(19) Forestry Research Advisory Committee.

(20) Reforestation Advisory Committee.

(21) Council for Women in Parks.

(22) Disabled Advisory Committee.

(23) Underwater Parks and Reserves, Advisory Board.

(24) Women's Advisory Committee in the Department of Personnel Administration.

(25) State Advisory Board on Alcohol Related Problems.

(26) State Advisory Board on Drug Program.

(27) AIDS Vaccine Research and Development, Advisory Committee.

(28) California Children Services Advisory Committee.

(29) Chronic Disease Prevention and Control.

(30) California Family Planning Advisory Board.
(31) State Social Services Advisory Board.
(32) American Indian Educational Council.
(33) Equal Educational Opportunities Commission.
(34) Legal Compliance Committee.
(35) Microcomputer Advisory Committee.
(36) Common Form Committee.
(37) Graduate Fellowship Advisory Committee.
(38) Career Criminal Apprehension Program Steering Committee.
(39) Crime Prevention & Suppression Technical Advisory Committee.
(40) Crime Resistance Task Force.
(41) Suppression of Drugs in Schools State Advisory Committee.
(42) Auctioneer Disciplinary Review Committee.
(43) Acarine Mite Science Advisory Panel.
(44) Boll Weevil Science Advisory Panel.
(45) Brucellosis Review Committee.
(46) Carob Moth Science Advisory Panel.
(47) Department of Food and Agriculture EEO/Disabled Advisory Committee.
(48) Department of Food and Agriculture Women's Advisory Committee.
(49) Direct Marketing Advisory Committee.
(50) Foreign Market Development Export Incentive Program Advisory Committee.
(51) Gypsy Moth Science Advisory Panel.
(52) Hydrilla Science Advisory Panel.
(53) Japanese Beetle Science Advisory Panel.
(54) Melon Fruit Fly Science Advisory Panel.
(55) Oriental Fruit Fly Science Advisory Panel.
(56) Pest Detection Advisory Committee.
(57) Red Imported Fire Ant Science Advisory Panel.
(58) White Garden Snail Science Advisory Panel.
(59) Whitefringed Beetle Science Advisory Panel.
(60) Displaced Homemakers Emergency Loan Program, Advisory Committee.
(61) California Forum on Information Technology.
(62) Farm Products Trust Fund Review Board.
(63) Economic Opportunity Advisory Commission in the Department of Economic Opportunity.

(b) As used in this section "advisory body" means any committee, council, task force, board, panel, or other governmental entity.

SEC. 2. Section 53091 of the Government Code is amended to read:

53091. Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated. On projects for which state

school building aid is requested by a local agency for construction of school facilities the county or city planning commission in which said agency is located shall consider in its review for approval information relating to attendance area enrollment, adequacy of the site upon which the construction is proposed, safety features of the site and proposed construction, and present and future land utilization, and report thereon to the State Allocation Board. If the local agency is situated in more than one city or county or partly in a city and partly in a county, the local agency shall comply with the ordinances of each county or city with respect to the territory of the local agency which is situated in the particular county or city and the ordinances of a county or city shall not be applied to any portion of the territory of the local agency which is situated outside the boundaries of the county or city. Notwithstanding the preceding provisions of this section, this section does not require a school district or the state when acting under the State Contract Act to comply with the building ordinances of a county or city. Notwithstanding the preceding provisions of this section, this section does not require a school district to comply with the zoning ordinances of a county or city unless the zoning ordinance makes provision for the location of public schools and unless the city or county has adopted a general plan.

Each local agency required to comply with building ordinances and zoning ordinances pursuant to this section and each school district whose school buildings are inspected by a county or city pursuant to Section 53092 shall be subject to the provisions of the applicable ordinances of a county or city requiring the payment of fees but the amount of those fees charged a local agency or school district shall not exceed the amount charged under the ordinance to nongovernmental agencies for the same services or permits. Building ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, or transmission of water, wastewater, or electrical energy by a local agency.

Zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, or transmission of water, or for the production or generation of electrical energy, nor to facilities which are subject to Section 12808.5 of the Public Utilities Code, nor to electrical substations in an electrical transmission system which receives electricity at less than 100,000 volts. Zoning ordinances of a county or city shall apply to the location or construction of facilities for the storage or transmission of electrical energy by a local agency; provided, that the zoning ordinances make provision for those facilities.

SEC. 3. Section 65040.6 of the Government Code is amended to read:

65040.6. (a) The Planning Advisory and Assistance Council is hereby created within the office, the membership of which shall be

as follows: three city representatives; three county representatives; one representative of each district, provided that at least two of the district representatives are representatives of metropolitan areawide planning organizations and that at least one of the district representatives is a representative of a nonmetropolitan planning organization; and one representative of Indian tribes and bands which have reservations or rancherias within California. The city and county representatives appointed pursuant to this subdivision shall be selected by the director from nominees submitted by the League of California Cities and by the California State Association of Counties. Representatives of areawide planning organizations appointed pursuant to this subdivision shall be selected by the director from nominees submitted by the several areawide planning organizations within the state. Other district representatives shall be appointed by the director. The representative of Indian tribes and bands shall be a member of one tribe or band, and shall be selected by the director.

Appointment to the advisory council shall be for a term of two years, provided that the members of the first council shall classify themselves by lot so that one-half shall serve an initial term of one year and one-half shall serve an initial term of two years. Vacancies shall be filled in the same manner provided for the original appointment.

(b) The council shall provide such advice as may be necessary to assist the office in discharging the requirements of Sections 65040 to 65040.4, inclusive. In particular, the council shall:

(1) Assist the office in the preparation of the state long-range goals and policies, in the manner specified in subdivision (a) of Section 65040.

(2) Evaluate the planning functions of the various state agencies involved in planning, in the manner specified in subdivision (c) of Section 65040.

(3) Make appropriate decisions and provide such advice and assistance as may be required by federal statute or regulation in connection with any federal program administered by the office.

(c) The council shall meet on call of the director of the office, who shall convene at least two council meetings during each year.

(d) Council members shall serve without compensation, but they may be reimbursed for actual expenses incurred in connection with their duties.

SEC. 3.1. Section 65460.2 of the Government Code is amended to read:

65460.2. A city or county may prepare a transit village plan for a transit village development district that addresses the following characteristics:

(a) A neighborhood centered around a transit station that is planned and designed so that residents, workers, shoppers, and others find it convenient and attractive to patronize transit.

(b) A mix of housing types, including apartments, within not more than a quarter mile of the exterior boundary of the parcel on which the transit station is located.

(c) Other land uses, including a retail district oriented to the transit station and civic uses, including day care centers and libraries.

(d) Pedestrian and bicycle access to the transit station, with attractively designed and landscaped pathways.

(e) A rail transit system that should encourage and facilitate intermodal service, and access by modes other than single occupant vehicles.

(f) Demonstrable public benefits beyond the increase in transit usage, including all of the following:

(1) Relief of traffic congestion.

(2) Improved air quality.

(3) Increased transit revenue yields.

(4) Increased stock of affordable housing.

(5) Redevelopment of depressed and marginal inner-city neighborhoods.

(6) Live-travel options for transit-needy groups.

(7) Promotion of infill development and preservation of natural resources.

(8) Promotion of a safe, attractive, pedestrian-friendly environment around transit stations.

(9) Reduction of the need for additional travel by providing for the sale of goods and services at transit stations.

(10) Promotion of job opportunities.

(11) Improved cost-effectiveness through the use of the existing infrastructure.

(12) Increased sales and property tax revenue.

(13) Reduction in energy consumption.

(g) Sites where a density bonus of at least 25 percent may be granted pursuant to specified performance standards.

(h) Other provisions that may be necessary, based on the report prepared pursuant to subdivision (b) of Section 14045.

SEC. 3.2. Section 65460.4 of the Government Code is amended to read:

65460.4. A transit village development district shall include all land within not more than a quarter mile of the exterior boundary of the parcel on which is located a rail transit station designated by the legislative body of a city, county, or city and county that has jurisdiction over the station area.

For purposes of this article, "district" means a transit village development district as defined in this section.

SEC. 3.3. Section 65588 of the Government Code is amended to read:

65588. (a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) The housing element shall be revised as appropriate, but not less than every five years, to reflect the results of this periodic review.

In order to facilitate effective review by the department of housing elements, the following local governments shall prepare and adopt the first two revisions of their housing elements no later than the dates specified in the following schedule, notwithstanding the date of adoption of the housing elements in existence on the effective date of the act which amended this section during the 1983–84 Session of the Legislature.

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: July 1, 1984, for the first revision and July 1, 1989, for the second revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: January 1, 1985, for the first revision, and July 1, 1990, for the second revision.

(3) Local governments within the regional jurisdiction of the San Diego Association of Governments, the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: July 1, 1985, for the first revision, and July 1, 1991, for the second revision.

(4) All other local governments: January 1, 1986, for the first revision, and July 1, 1992, for the second revision.

(5) Subsequent revisions shall be completed not less often than at five-year intervals following the second revision.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.

(e) Notwithstanding the requirements of paragraph (5) of subdivision (b), the dates of revisions for the housing element shall be modified upon the effective date of this provision as follows:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments and the San Diego Association of Governments: June 30, 1999, for the third revision, and June 30, 2004, for the fourth revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: June 30, 2000, for the third revision, and June 30, 2005, for the fourth revision.

(3) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: June 30, 2001, for the third revision, and June 30, 2006, for the fourth revision.

(4) All other local governments: June 30, 2002, for the third revision, and June 30, 2007, for the fourth revision.

(5) Subsequent revisions shall be completed not less often than at five-year intervals following the fourth revision.

(f) The amendments made to this section by Chapter 39 of the Statutes of 1996 and this act shall not be construed to reinstate any state-mandated local program suspended by the Budget Acts of 1992, 1993, 1994, 1995, 1996, or 1997, nor to limit any existing responsibility, pursuant to subdivision (b), of any jurisdiction to adopt a housing element in accordance with this article.

SEC. 3.4. Section 66413.7 of the Government Code is amended and renumbered to read:

66455.9. Whenever there is consideration of an area within a development for a public schoolsite, the advisory agency shall give the State Department of Education written notice of the proposed site. If the site is within the distance of an airport runway as described in Section 39005 of the Education Code, the department shall notify the State Department of Transportation as required by the section. The State Department of Education shall investigate the proposed site and, within 35 days after receipt of the notice, shall submit to the advisory agency and school district a written report and its recommendations concerning the site.

The governing board of the school district shall not acquire title to the property until the report of the State Department of Education has been received. If the report does not favor the acquisition of the

property for a schoolsite, the governing board shall not acquire title to the property until 30 days after 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 this type, in a newspaper of general circulation within the county in which the property is located.

SEC. 3.5. Section 66418.2 of the Government Code is amended to read:

66418.2. (a) "Environmental subdivision" means a subdivision of land pursuant to this division for biotic and wildlife purposes that meets all of the conditions specified in subdivision (b).

(b) Prior to approving or conditionally approving an environmental subdivision, the local agency shall find each of the following:

(1) That factual biotic or wildlife data, or both, are or will be available to the local agency approving the environmental subdivision to support the application for approval.

(2) That provisions have been made for the perpetual maintenance of the property as a biotic or wildlife habitat, or both, in accordance with the conditions specified by any local, state, or federal agency requiring mitigation.

(3) That an easement will be recorded in the county in which the land is located to ensure compliance with the conditions specified by any local, state, or federal agency requiring the mitigation. The easement shall contain a covenant with a county, city, or nonprofit organization running with the land in perpetuity, that the landowner shall not construct or permit the construction of improvements except those for which the right is expressly reserved in the instrument. This reservation shall be not inconsistent with the purposes of this section and shall not be incompatible with maintaining and preserving the biotic or wildlife character, or both, of the land.

(4) The real property is at least 20 acres in size, or it is less than 20 acres in size, but is contiguous to other land that would also qualify as an environmental subdivision and the total combined acreage would be 20 acres or more.

(c) Notwithstanding subdivision (a) of Section 66411.1, any improvement, dedication, or design required by the local agency as a condition of approval of an environmental subdivision shall be solely for the purposes of ensuring compliance with the conditions required by the local, state, or federal agency requiring the mitigation.

(d) After recordation of an environmental subdivision, a subdivider may only abandon an environmental subdivision by reversion to acreage pursuant to Chapter 6 (commencing with Section 66499.11) if the local agency finds that all of the following conditions exist:

(1) None of the parcels created by the environmental subdivision has been sold or exchanged.

(2) None of the parcels is being used, set aside, or required for mitigation purposes pursuant to this section.

(3) Upon abandonment and reversion to acreage pursuant to this subdivision, the easement for biotic and wildlife purposes is extinguished.

(e) If the environmental subdivision is abandoned and reverts to acreage pursuant to subdivision (d), all local, state, and federal requirements shall apply.

(f) This section shall apply only upon the written request of the landowner at the time the land is divided. This section is not intended to limit or preclude subdivision by other lawful means for the mitigation of impacts to the environment, or of the land devoted to these purposes, or to require the division of land for these purposes.

(g) Notwithstanding any other provision of law, no legislative body shall approve or conditionally approve a subdivision pursuant to this section on or after January 1, 2003.

SEC. 3.6. Section 66434 of the Government Code is amended to read:

66434. The final map shall be prepared by or under the direction of a registered civil engineer or licensed land surveyor, shall be based upon a survey, and shall conform to all of the following provisions:

(a) It shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film. Certificates, affidavits, and acknowledgments may be legibly stamped or printed upon the map with opaque ink. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.

(b) The size of each sheet shall be 18 by 26 inches or 460 by 660 millimeters. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch or 025 millimeters. The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end. The particular number of the sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown.

(c) All survey and mathematical information and data necessary to locate all monuments and to locate and retrace any and all interior and exterior boundary lines appearing thereon shall be shown, including bearings and distances of straight lines, and radii and arc length or chord bearings and length for all curves, and any information which may be necessary to determine the location of the centers of curves and ties to existing monuments used to establish the subdivision boundaries.

(d) Each parcel shall be numbered or lettered and each block may be numbered or lettered. Each street shall be named or otherwise designated.

(e) The exterior boundary of the land included within the subdivision shall be indicated by distinctive symbols and clearly so designated. The map shall show the definite location of the subdivision, and particularly its relation to surrounding surveys.

If the map includes a "designated remainder" parcel, and the gross area of the "designated remainder" parcel or similar parcel is five acres or more, that remainder parcel need not be shown on the map and its location need not be indicated as a matter of survey, but only by deed reference to the existing boundaries of the remainder parcel.

A parcel designated as "not a part" shall be deemed to be a "designated remainder" for purposes of this section.

(f) On and after January 1, 1987, no additional requirements shall be included which do not affect record title interests. However, the map shall contain a notation or reference to additional information required by a local ordinance adopted pursuant to Section 66434.2.

(g) Any public streets or public easements to be left in effect after the subdivision shall be adequately delineated on the map. The filing of the final map shall constitute abandonment of all public streets and public easements not shown on the map, provided that a written notation of each abandonment is listed by reference to the recording data or other official record creating these public streets or public easements and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map. Before a public easement vested in another public entity may be abandoned pursuant to this section that public entity shall receive notice of the proposed abandonment. No public easement vested in another public entity shall be abandoned pursuant to this section if that public entity objects to the proposed abandonment.

SEC. 3.7. Section 66445 of the Government Code is amended to read:

66445. The parcel map shall be prepared by, or under the direction of, a registered civil engineer or licensed land surveyor, shall show the location of streets and property lines bounding the property, and shall conform to all of the following provisions:

(a) It shall be legibly drawn, printed or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film. Certificates or statements, affidavits, and acknowledgments may be legibly stamped or printed upon the map with opaque ink. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.

(b) The size of each sheet shall be 18 by 26 inches or 460 by 660 millimeters. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch or 025 millimeters. The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end. The particular number of the sheet and the total number of sheets

comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown.

(c) Each parcel shall be numbered or lettered and each block may be numbered or lettered. Each street shall be named or otherwise designated.

(d) (1) The exterior boundary of the land included within the subdivision shall be indicated by distinctive symbols and clearly so designated.

(2) The map shall show the location of each parcel and its relation to surrounding surveys. If the map includes a "designated remainder" parcel or similar parcel, and the gross area of the "designated remainder" parcel or similar parcel is five acres or more, that remainder parcel need not be shown on the map and its location need not be indicated as a matter of survey, but only by deed reference to the existing boundaries of the remainder parcel.

(3) A parcel designated as "not a part" shall be deemed to be a "designated remainder" for purposes of this section.

(e) Subject to the provisions of Section 66436, a statement, signed and acknowledged by all parties having any record title interest in the real property subdivided, consenting to the preparation and recordation of the parcel map is required, except that less inclusive requirements may be provided by local ordinance.

With respect to a division of land into four or fewer parcels, where dedications or offers of dedications are not required, the statement shall be signed and acknowledged by the subdivider only. If the subdivider does not have a record title ownership interest in the property to be divided, the local agency may require that the subdivider provide the local agency with satisfactory evidence that the persons with record title ownership have consented to the proposed division. For purposes of this paragraph, "record title ownership" shall mean fee title of record unless a leasehold interest is to be divided, in which case "record title ownership" shall mean ownership of record of the leasehold interest. Record title ownership does not include ownership of mineral rights or other subsurface interests which have been severed from ownership of the surface.

(f) Notwithstanding any other provision of this article, local agencies may require that those statements and acknowledgments required pursuant to subdivision (e) be made by separate instrument to be recorded concurrently with the parcel map being filed for record.

(g) On and after January 1, 1987, no additional survey and map requirements shall be included on a parcel map which do not affect record title interests. However, the map shall contain a notation of reference to survey and map information required by a local ordinance adopted pursuant to Section 66434.2.

(h) Whenever a certificate or acknowledgment is made by separate instrument, there shall appear on the parcel map a

reference to the separately recorded document. This reference shall be completed by the county recorder pursuant to Section 66468.1.

(i) If a field survey was performed, the parcel map shall contain a statement by the engineer or surveyor responsible for the preparation of the map that states that all monuments are of the character and occupy the positions indicated, or that they will be set in those positions on or before a specified date, and that the monuments are, or will be, sufficient to enable the survey to be retraced.

(j) Any public streets or public easements to be left in effect after the subdivision shall be adequately delineated on the map. The filing of the parcel map shall constitute abandonment of all public streets and public easements not shown on the map, provided that a written notation of each abandonment is listed by reference to the recording data or other official record creating these public streets or public easements and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map. Before a public easement vested in another public entity may be abandoned pursuant to this section that public entity shall receive notice of the proposed abandonment. No public easement vested in another public entity shall be abandoned pursuant to this section if that public entity objects to the proposed abandonment.

SEC. 3.8. Section 66452.5 of the Government Code is amended to read:

66452.5. (a) The subdivider, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, may appeal from any action of the advisory agency with respect to a tentative map to the appeal board established by local ordinance or, if none, to the legislative body.

The appeal shall be filed with the clerk of the appeal board, or if there is none, with the clerk of the legislative body within 10 days after the action of the advisory agency from which the appeal is being taken.

Upon the filing of an appeal, the appeal board or legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of filing the appeal. Within 10 days following the conclusion of the hearing, the appeal board or legislative body shall render its decision on the appeal.

(b) The subdivider, any tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, or the advisory agency may appeal from the action of the appeal board to the legislative body. The appeal shall be filed in writing with the clerk of the legislative body within 10 days after the action of the appeal board from which the appeal is being taken.

After the filing of an appeal, the legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date

of a request therefor filed by the subdivider or the appellant. Within 10 days following the conclusion of the hearing, the legislative body shall render its decision on the appeal. The decision shall comply with the provisions of Sections 66473, 66473.5, and 66474, and shall include any findings required by those sections.

(c) If there is an appeal board and it fails to act upon an appeal within the time limit specified in this chapter, the decision from which the appeal was taken shall be deemed affirmed and an appeal therefrom may thereupon be taken to the legislative body as provided in subdivision (b) of this section. If no further appeal is taken, the tentative map, insofar as it complies with applicable requirements of this division and local ordinance, shall be deemed approved or conditionally approved as last approved or conditionally approved by the advisory agency, and it shall be the duty of the clerk of the legislative body to certify or state that approval, or if the advisory agency is one which is not authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, the advisory agency shall submit its report to the legislative body as if no appeal had been taken.

If the legislative body fails to act upon an appeal within the time limit specified in this chapter, the tentative map, insofar as it complies with applicable requirements of this division and local ordinance, shall be deemed to be approved or conditionally approved as last approved or conditionally approved, and it shall be the duty of the clerk of the legislative body to certify or state that approval.

(d) Any interested person adversely affected by a decision of the advisory agency or appeal board may file an appeal with the governing body concerning any decision of the advisory agency or appeal board. The appeal shall be filed with the clerk of the governing body within 10 days after the action of the advisory agency or appeal board which is the subject of the appeal. Upon the filing of the appeal, the governing body shall set the matter for hearing. The hearing shall be held within 30 days after the filing of the appeal. The hearing may be a public hearing for which notice shall be given in the time and manner provided.

Upon conclusion of the hearing, the governing body shall, within 10 days, declare its findings based upon the testimony and documents produced before it or before the advisory board or the appeal board. It may sustain, modify, reject, or overrule any recommendations or rulings of the advisory board or the appeal board and may make any findings which are not inconsistent with the provisions of this chapter or local ordinance adopted pursuant to this chapter.

(e) Notice of each hearing provided for in this section shall be sent by United States mail to each tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to the hearing. The notice requirement of this

subdivision shall be deemed satisfied if the notice complies with the legal requirements for service by mail. Pursuant to Section 66451.2, fees may be collected from the subdivider or from persons appealing or filing an appeal for expenses incurred under this section.

SEC. 3.9. Section 67575.9 of the Government Code is amended and renumbered to read:

67675.9. If an environmental impact statement on the closure and reuse of Fort Ord has been prepared and filed pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), the board may proceed in the following manner:

(a) A notice of the preparation of an environmental impact report on the Fort Ord Reuse Plan shall be prepared pursuant to either Section 21080.4 or Section 21080.6 of the Public Resources Code, and shall include a description of the reuse plan and a copy of the environmental impact statement. The notice shall indicate that the board intends to utilize the environmental impact statement as a draft environmental impact report and requests comments on whether, and to what extent, the environmental impact statement provides adequate information to serve as a draft environmental impact report, and what specific additional information, if any, is necessary to comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). The notice shall also indicate the address to which written comments may be sent and the deadline for submitting comments.

(b) Upon the close of the comment period on the notice of preparation, the board may proceed with preparation of the environmental impact report on the reuse plan. The board shall, to the greatest extent feasible, avoid duplication and utilize information in the environmental impact statement consistent with this division. The draft environmental impact report shall consist of all or part of the environmental impact statement and any additional information that is necessary to prepare a draft environmental impact report in compliance with the California Environmental Quality Act.

(c) In all other respects, the environmental impact report for the reuse plan shall be completed in compliance with the California Environmental Quality Act.

SEC. 4. Section 17921.7 of the Health and Safety Code is amended to read:

17921.7. (a) (1) The Legislature finds and declares all of the following:

(A) Acrylonitrile-butadiene-styrene ("ABS") drain, waste, and vent plumbing pipe is used to drain or vent wastewater from kitchens, bathrooms, washers, and plumbing fixtures found in the home. ABS pipe is commonly used in residential construction, and ABS pipe has been installed in the foundations and walls of thousands of single-family homes, apartments, condominiums, and other residences throughout California.

(B) The American Society for Testing and Materials (ASTM) has established specifications for the manufacture of ABS pipe, including a requirement that ABS pipe be made from virgin plastic resin. These specifications have been incorporated into the Uniform Plumbing Code (UPC), which is applicable to all occupancies throughout the state pursuant to subdivision (b) of Section 18938, a provision of the California Building Standards Law (Part 2.5 (commencing with Section 18901)).

(C) ABS pipe that does not meet ASTM requirements might, within a period of a decade or less, crack and leak wastewater and sewage, resulting in structural damage, vermin infestation, and severe health hazards for residents or occupants of buildings in which defectively manufactured ABS pipe has failed. One apparent cause of these mechanical failures of ABS pipe has been the use of nonvirgin, reprocessed plastic resin for the manufacture of ABS pipe.

(D) The continued use of this nonvirgin, reprocessed plastic resin by some ABS pipe manufacturers violates the requirements of the UPC and is also in violation of the building standards established in accordance with the California Building Standards Law. The problem of the property damage inflicted on the public continues to worsen.

(E) Thousands of California residents either already have, or eventually will, experience serious damage to their homes, apartments, and condominiums, as well as threats to their health and safety, because of the substandard ABS pipe that has been installed, in violation of building standards, in structures throughout the state.

(F) There are currently no statutes or regulations that apply to the sale of defective plastic resin to ABS pipe manufacturers.

(2) It is, therefore, the intent of the Legislature that both of the following occur:

(A) That a provision that addresses the important issues set forth in paragraph (1) be added to the State Housing Law.

(B) That the Department of Housing and Community Development expeditiously implement the provisions of Chapter 413 of the Statutes of 1993 that relate to this section.

(b) On and after the effective date of the act that adds this section, no person shall sell or offer for sale a plastic resin for use in the manufacture of ABS DWV pipe that does not meet the requirements of the listing pursuant to authority granted by subdivision (e).

(c) (1) Any and all plastic resin sold to an ABS DWV pipe manufacturer for use in ABS DWV pipe shall contain a certification that the plastic resin conforms to the requirements specified in the listing pursuant to subdivision (e).

(2) Any and all plastic resin sold to an ABS pipe manufacturer shall be accompanied by a document indicating the name and address of the manufacturer of that plastic resin, the date that the plastic resin was purchased by the seller, and specifications of the chemical and physical properties of the plastic resin. For a period of at least 10 years

from the date of the sale of this plastic resin, the information required to be certified by this subdivision shall be kept onsite at the ABS pipe manufacturing plant, and available for inspection by the enforcement agency, at all times.

(d) No ABS DWV pipe that contains plastic resin that does not meet the requirements of the listing pursuant to subdivision (e) may be sold or offered for sale, or installed in any structure that is subject to this part.

(e) The listing agencies, as approved by the department, shall publish in each listing agreement with ABS DWV pipe manufacturers a list of ABS resins and resin compounds used by that manufacturer and approved for use by the listing agency. The approval of ABS resins and resin compounds shall be based on nationally recognized standards. The listing agencies shall consult with the affected parties.

SEC. 5. Section 18901 of the Health and Safety Code is amended to read:

18901. (a) This part shall be known and may be cited as the California Building Standards Law.

(b) The California Building Standards Commission shall continue within the State and Consumer Services Agency.

SEC. 6. Section 18922 of the Health and Safety Code is amended to read:

18922. The Secretary of the State and Consumer Services Agency or the secretary's representative shall serve as the chair of the commission. The commission shall elect a vice chair annually from among its members.

SEC. 7. Section 18923 of the Health and Safety Code is amended to read:

18923. (a) The term of office of members of the commission shall be four years and they shall hold office until the appointment and qualification of their successors, not to exceed 180 days after the term is expired.

(b) The terms of members of the commission shall be staggered based on the following cycle:

(1) The terms of two members shall expire on January 1, 1981.

(2) The terms of three members shall expire on January 1, 1982.

(3) The terms of two members shall expire on January 1, 1983.

(4) The terms of three members shall expire on January 1, 1984.

(c) Prior members of the commission may be reappointed.

(d) In the event of a vacancy prior to the expiration of a term, an appointment shall be made to fill the balance of the unexpired term.

SEC. 8. Section 18944.31 of the Health and Safety Code is amended to read:

18944.31. (a) Notwithstanding any other provision of law, the guidelines established by this chapter shall not become operative within any city or county unless and until the legislative body of the city or county makes an express finding that the application of these

guidelines within the city or county is reasonably necessary because of local conditions and the city or county files a copy of that finding with the department.

(b) In adopting ordinances or regulations, a city or county may make any changes or modifications in the guidelines contained in this chapter as it determines are reasonably necessary because of local conditions, provided the city or county files a copy of the changes or modifications and the express findings for the changes or modifications with the department. No change or modification of that type shall become effective or operative for any purpose until the finding and the change or modification has been filed with the department.

(c) Nothing in this chapter shall be construed as increasing or decreasing the authority to approve or disapprove of alternative construction methods pursuant to the State Housing Law, Part 1.5 (commencing with Section 17910) or the California Building Standards Code, Title 24 of the California Code of Regulations.

SEC. 9. The Legislature finds and declares that the amendment of Section 18944.31 of the Health and Safety Code by this act is declaratory of existing law.

SEC. 10. Section 18959 of the Health and Safety Code is amended to read:

18959. (a) Except as otherwise provided in Part 2.5 (commencing with Section 18901), all state agencies shall administer and enforce this part with respect to qualified historical buildings or structures under their respective jurisdiction.

(b) Except as otherwise provided in Part 2.5 (commencing with Section 18901), all local building authorities shall administer and enforce this part with respect to qualified historical buildings or structures under their respective jurisdictions where applicable.

(c) The State Historical Building Safety Board shall coordinate and consult with the other applicable state agencies affected by this part and, except as provided in Section 18943, disseminate provisions adopted pursuant to this part to all local building authorities and state agencies at cost.

(d) Regulations adopted by the State Fire Marshal pursuant to this part shall be enforced in the same manner as regulations are enforced under Sections 13145, 13146, and 13146.5.

(e) Regular and alternative building standards published in the California Building Standards Code shall be enforced in the same manner by the same governmental entities as provided by law.

(f) When administering and enforcing the provisions of this part, all local agencies may make changes or modifications in the requirements contained in the State Historical Building Code, as described in Section 18944.7, as it determines are reasonably necessary because of local climatic, geological, seismic, and topographical conditions. The local agency shall make an express finding that the modifications or changes are needed, and the finding

shall be available as a public record. A copy of the finding and change or modification shall be filed with the State Historical Building Safety Board. No modification or change shall become effective or operative for any purpose until the finding and modification or change has been filed with the board.

SEC. 11. Section 33320.5 of the Health and Safety Code is amended and renumbered to read:

33492.40. (a) Notwithstanding Section 33320.1, the requirement that privately owned land within a project area be "predominantly urbanized," as that term is defined in subdivision (b) of Section 33320.1, shall not apply to privately owned land within a project area, if the privately owned land is adjacent or in proximity to a military facility or installation which is proposed to be closed pursuant to Public Law 100-526 and the inclusion of the privately owned land is found by an entity formed pursuant to subdivision (b) to be necessary for the effective redevelopment of the military facility or installation and the adjacent area.

(b) The legislative bodies for communities having territory within, adjacent to or in proximity to a military facility or installation described in subdivision (a) may create a separate joint powers agency pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, which shall have and exclusively exercise powers of an agency in furtherance of the redevelopment of a project area approved by the joint powers agency. The joint powers agency so formed shall include as one of its members the county in which the project area is located. In addition to the powers of an agency, the joint powers agency so formed shall also act as the legislative body and planning commission for all approvals and actions required by this part of legislative bodies and planning commissions for the adoption and implementation of a redevelopment plan. However, all land use, planning, and development decisions with regard to the land within the project area shall continue to be under the control and jurisdiction of each of the respective local legislative bodies or planning commissions, as applicable.

(c) The territory included within the project and project area may be contiguous or noncontiguous, and any project area may be located in whole or in part within one or more of the communities impacted by the closure of the military facility or installation, and the land to be included within the project area within the community or communities in proximity to the military facility or installation shall be found necessary for the effective redevelopment of the military facility or installation and the adjacent area. A project area shall not include territory outside the jurisdiction of the communities that are parties to the joint powers agency without the consent of the legislative body having jurisdiction over the territory proposed to be included within the project area.

(d) A redevelopment plan for the project area shall contain all of the provisions required by this part. However, if the agency finds, based on substantial evidence on the record, that compliance with the requirements of Sections 33333.2 and 33334.1 would make it impracticable to achieve the policies of this section, the agency may eliminate or modify the requirements of Sections 33333.2 and 33334.1.

(e) The redevelopment plan shall provide for either of the following:

(1) A Low- and Moderate-Income Housing Fund, as required by Section 33334.2.

(2) A deferral for depositing all or part of the 20 percent of taxes allocated to the agency pursuant to Section 33670 in the Low- and Moderate-Income Housing Fund if the agency, after conducting a noticed public hearing, makes, and the executive committee of the Southern California Association of Governments reviews and approves, findings supported by substantial evidence that all of the following apply:

(A) The military facility or installation cannot be acquired or developed by private enterprise without the assistance of the agency.

(B) There are no feasible alternative means of financing the acquisition or development of the military facility or installation other than by utilizing the low- and moderate-income housing portion of the taxes which are allocated to the agency pursuant to subdivision (b) of Section 33670.

(C) Failure of the agency to finance the acquisition or development of the military facility or installation would lead to serious economic hardship and job loss.

(D) The redevelopment plan shall specify the period during which less than 20 percent of the taxes which are allocated to the agency pursuant to subdivision (b) of Section 33670, is to be deposited in the Low- and Moderate-Income Housing Fund. The redevelopment plan shall also contain a repayment plan which specifies a date at which time the agency will have made up the deficit created by the deferral, including repayment of the interest at the highest rate received by the agency on funds it deposits during the period of deferral. The repayment plan shall reduce the deficit in the shortest feasible time consistent with the needs of the agency, as specified in the agency's findings.

(f) The joint powers agency acting as the agency, the legislative body or the planning commission, shall follow all procedures under this part applicable to the adoption and amendment of redevelopment plans, except with respect to Sections 33347.5, 33353 to 33353.6, inclusive, Sections 33354.4 to 33354.6, inclusive, and Section 33385.

(g) The agency shall create a fiscal advisory group to consult with each affected taxing agency and to advise and report to the agency in the manner required of a fiscal review committee by Section 33353.5 on any potential fiscal impact upon affected taxing agencies

within the project area. The fiscal advisory group shall consist of the financial officer or treasurer of each city and each county which created the joint powers authority.

(h) The agency shall prepare and distribute to each affected taxing agency a report which includes the information required by Section 33328. The agency shall also prepare an analysis of the report required of a fiscal review committee pursuant to subdivision (m) of Section 33352 and an analysis of the report required of the fiscal advisory group pursuant to subdivision (g).

(i) As used in this section, "in proximity to" means within three miles of the boundary of Norton Air Force Base and within eight miles of George Air Force Base.

(j) The Legislature finds and declares that the closure of two or more military facilities or installations within the County of San Bernardino will cause serious economic hardship in that county, including loss of jobs, increased unemployment, deterioration of properties and land utilization and undue disruption of the lives and activities of the people. Therefore, the Legislature finds and declares that to avoid serious economic hardship and accompanying blight, it is necessary to enact this act which shall apply only within the County of San Bernardino. In enacting this act, it is the policy of the Legislature to assist communities within the County of San Bernardino in their attempt to preserve the military facilities and installations for their continued use as airports and aviation-related purposes.

It is the intent of the Legislature and the commitment of the local authorities to ensure that the existing airfields at both Norton Air Force Base and George Air Force Base are protected, developed, and enhanced as civil aviation public use airports. Therefore, the joint powers authorities authorized by this section should make every reasonable effort to guarantee that these vital airport facilities are retained for general aviation use now and into the future.

(k) Any joint powers agreement entered into pursuant to this section shall provide that the financial needs of each of the parties shall be considered prior to adoption of a redevelopment plan, and may provide that the number of years shall be limited during which bonded indebtedness may be paid using taxes which are allocated to the agency pursuant to subdivision (b) of Section 33670.

(l) A joint powers agency operating within the area of Norton Air Force Base shall appoint a project area citizens committee for the purpose of consultation and advice regarding policy matters that relate to planning and programs affecting the residents, businesses, and educational institutions within the project area, implementation of the redevelopment plan, and the development and implementation of amendments to the redevelopment plan.

(2) The committee shall be comprised of residential owners, residential tenants, business owners, small business owners, business tenants, educational institution representatives, and community

groups currently operating, living, or working within the project area. The membership of the Project Area Citizens Committee shall be appointed by the legislative body of the agency and shall be representative, both racially and ethnically, of the people who live and work within the project area.

(3) For the purposes described above the committee shall meet at lease once quarterly or more often to review policy matters and implementation issues as determined necessary by the legislative body.

(*l*) Amendments to any redevelopment plans adopted pursuant to this section shall not be required to comply with the provisions of Section 33452, provided that notice of the public hearing for any amendment adopted pursuant to Section 33540, and following, is published pursuant to Section 6063 of the Government Code and mailed by regular mail to the governing body of each of the taxing agencies which levies taxes upon any property in the project area designated in the redevelopment plan as proposed to be amended.

SEC. 11.3. Section 33320.6 of the Health and Safety Code is repealed.

SEC. 11.5. Section 33320.7 of the Health and Safety Code is amended and renumbered to read:

33492.41. (a) Notwithstanding Section 21090 of the Public Resources Code, the Inland Valley Development Agency may determine at a noticed public hearing that the amendment of a redevelopment plan for the Norton Air Force Base Redevelopment Project Area pursuant to this chapter is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), except that projects implementing the redevelopment plan, including specific plans, rezonings, and ministerial projects that may have a significant effect on the environment, shall be subject to the California Environmental Quality Act. The environmental document for any implementing project shall include an analysis and mitigation of potential cumulative impacts that otherwise will not be known until an environmental impact report for the redevelopment plan is certified.

(b) The notice of the public hearing required pursuant to subdivision (a) shall include the date, time, and place of the hearing, a brief description of the proposed project and its location, the date when notice will be provided pursuant to Section 21092 of the Public Resources Code, and the address where copies of the notice of exemption are available for review.

(c) The notice required by this section shall be given to all organizations and individuals who have previously requested notice pursuant to the California Environmental Quality Act, and shall be given by publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(d) If the Inland Valley Development Agency determines, pursuant to subdivision (a), that the amendment of a redevelopment plan is not subject to the California Environmental Quality Act, the redevelopment agency shall prepare and certify an environmental impact report for the redevelopment plan amendment within 12 months after the effective date of the ordinance amending the redevelopment plan.

(e) An environmental impact report prepared and certified for a specific plan or other comprehensive land use plan for the applicable portion of the Inland Valley Redevelopment Project Area shall satisfy the requirement of subdivision (d) if the plan covers the same area and project as the amendment to the redevelopment plan and is certified within 12 months after the effective date of the ordinance amending the redevelopment plan.

(f) The redevelopment agency shall revise the redevelopment plan if necessary to mitigate any impacts and comply with the California Environmental Quality Act and adopt mitigation measures as conditions of project approval.

(g) This section shall only apply to a redevelopment plan amendment approved on or before September 1, 1995.

SEC. 12. Section 33331 of the Health and Safety Code is amended to read:

33331. Every redevelopment plan shall be consistent with the community's general plan.

SEC. 12.3. Section 33334.18 of the Health and Safety Code is repealed.

SEC. 12.5. A heading is added as Article 1.5 (commencing with Section 33492.40) of Chapter 4.5 of Part 1 of Division 24 of the Health and Safety Code, to read:

Article 1.5. Norton Air Force Base and George Air Force Base Redevelopment Project Areas

SEC. 12.7. Section 33492.114 of the Health and Safety Code is repealed.

SEC. 13. Article 7 (commencing with Section 33493.1) of Chapter 4.5 of Part 1 of Division 24 of the Health and Safety Code, as added by Chapter 222 of the Statutes of 1996, is amended and renumbered to read:

Article 8. The Alameda Naval Air Station and the Fleet Industrial Supply Center

33492.125. With the enactment of this article, it is the intent of the Legislature to provide for precise and specific means to mitigate the very serious economic effects of the closure of the Alameda Naval Air Station and the Fleet Industrial Supply Center on the City of Alameda, surrounding cities, and the County of Alameda by

facilitating the planning and implementation of the reuse and redevelopment of the lands comprising the Naval Air Station and the Fleet Industrial Supply Center located in the City of Alameda and the surrounding areas in accordance with land use plans and a redevelopment plan that are in effect prior to the disposition of lands by the federal government.

33492.127. A redevelopment plan covering all or part of the lands of the Alameda Naval Air Station and the Fleet Industrial Supply Center Redevelopment Project may be adopted pursuant to Article 1 (commencing with Section 33492), provided that the project area shall not include territory outside the boundaries of the Alameda Naval Air Station and the Fleet Industrial Supply Center.

33492.129. Notwithstanding Section 33492.9 or any other provision of law, the redevelopment agency shall make payments to affected taxing entities required by Section 33607.5.

33492.131. (a) Dwelling units, as defined, in the Alameda Naval Air Station and the Fleet Industrial Supply Center Project Area made available to a member of the Homeless Collaborative pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Part A of Title XXIX of Public Law 101-510; 10 U.S.C. Sec. 2687 note), and in particular Section (7) (C) through (O) thereof, and thereafter substantially rehabilitated, shall be deemed substantially rehabilitated units for purposes of determining the compliance of the Alameda Naval Air Station and the Fleet Industrial Supply Center redevelopment agency with the provisions of subdivision (b) of Section 33413.

(b) For the purposes of this section "dwelling units" means permanent or transitional residential units, and does not mean student dormitory rooms or overnight emergency shelter beds.

(c) For the purposes of this section "substantially rehabilitated" means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of land value.

SEC. 14. Section 50054 of the Health and Safety Code, as amended by Section 3 of Chapter 94 of the Statutes of 1994, is repealed.

SEC. 15. Section 50150 of the Health and Safety Code, as amended by Section 4 of Chapter 94 of the Statutes of 1994, is repealed.

SEC. 16. Section 50154 of the Health and Safety Code, as amended by Section 5 of Chapter 94 of the Statutes of 1994, is repealed.

SEC. 16.5. Section 50199.50 of the Health and Safety Code is amended to read:

50199.50. For the purposes of this chapter:

(a) "Agricultural worker" or "farmworker" shall have the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code.

(b) "Compliance period" means, with respect to any farmworker housing, the period of 30 consecutive taxable or income years, beginning with the taxable or income year in which the credit is allowable.

(c) "Employee Housing Act" means Part 1 (commencing with Section 17000) of Division 13.

(d) "Farmworker housing" means housing for agricultural workers and may include, but need not be limited to, conventionally constructed units and manufactured housing.

(e) "Farmworker housing tax credits" means the tax credits authorized by Sections 17053.14, 23608.2, and 23608.3 of the Revenue and Taxation Code.

(f) "Household" has the same meaning as defined in Section 7602 of Title 25 of the California Code of Regulations.

(g) "Committee" means the California Tax Credit Allocation Committee as defined in Section 50199.7.

SEC. 16.7. Section 50199.52 of the Health and Safety Code is amended to read:

50199.52. All housing assisted pursuant to this chapter shall comply with the following requirements:

(a) (1) The recipient of a tax credit pursuant to Section 17053.14, 23608.2, or 23608.3 of the Revenue and Taxation Code, or the owner of the farmworker housing assisted pursuant to Section 17053.14 or 23608.2 of the Revenue and Taxation Code, shall enter into those agreements required by the committee to further the purposes of this chapter and the applicable farmworker housing tax credit sections.

(2) The owner shall agree that the farmworker housing units assisted with the farmworker housing tax credits shall be utilized, maintained, and operated pursuant to this chapter for the compliance term specified by the applicable farmworker housing tax credit statute.

(b) (1) The farmworker housing assisted pursuant to this chapter shall be available to, and occupied by, only farmworkers and their households. However, in the event of a natural disaster or other critical occurrence, as determined by the committee, the housing may be utilized at the discretion of the owner for households needing shelter for up to 60 days if there are no farmworkers who have submitted an application to reside, or to continue to reside, in the housing. The occupants of the housing need not be limited to farmworkers employed by the property owner.

(2) In addition, where the housing is designed and operated as a dormitory, the owner and operator may restrict occupancy by sex. However, in awarding credits pursuant to this chapter, the committee shall give preference to proposed farmworker housing that is designed and operated for families rather than for single sex dormitories.

(c) The expenditures upon which the amount of the farmworker housing tax credit is based shall be costs paid or incurred only for

construction or repairs of farmworker housing and general improvement costs necessary and directly related thereto, including, but not limited to, improvements to ensure compliance with laws governing access for persons with handicaps, building and permit fees, and costs related to reducing utility expenses, including additional insulation, solar water heating, or similar improvements.

SEC. 17. Section 50517 of the Health and Safety Code is amended to read:

50517. The fund shall be administered by the director and those persons within the department that the director may designate.

The fund shall be administered in accordance with all of the following requirements:

(a) The department shall not commit more than 30 percent of the total moneys in the fund for land purchase loans, or more than 85 percent of the total moneys in the fund for predevelopment loans. For purposes of this subdivision, once a land purchase loan has received a mortgage financing commitment, it shall then be calculated as a predevelopment loan.

(b) The department shall not commit more than 20 percent of the total moneys appropriated to the fund to any single borrower at any point in time.

(c) The department shall require adequate security for all loans made from the fund. For the purposes of this subdivision, the term "adequate security" includes, but need not be limited to, a security interest in any property purchased with fund moneys, a promissory note, or an assignment of a land option, except that in the case of Indian trust land a mortgage on a leasehold interest in the property shall be acceptable.

(d) No predevelopment loan may be made pursuant to this chapter unless the department may reasonably anticipate that a commitment can be obtained by an eligible sponsor for construction financing or long-term financing that will permit occupancy by persons of low income, as specified in subdivision (b) of Section 50516. The department may make land purchase loans to eligible sponsors to enable those sponsors to exercise options or to purchase land on which no option can be obtained even though the sponsor is not able at the time the loan is made to proceed with the development of assisted housing on the purchased site. If the eligible sponsor is unable to proceed with the development of assisted housing within three years of the sponsor's acquisition of the site, the sponsor shall convey the site to the department. The department shall dispose of the site in accordance with subdivision (o) of Section 50406, and the net proceeds shall be paid into the fund.

(e) The department shall, from time to time, direct the Treasurer to invest moneys of the fund that are not required for its current needs in such eligible securities as the department shall designate from among those specified in Section 16430 of the Government Code. The department may direct the Treasurer to deposit moneys

from the fund in interest-bearing accounts in state or national banks or other financial institutions having principal offices in this state. The department may alternatively require the transfer of moneys in the fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest, dividends, and pecuniary gains from those investments or deposits shall accrue to the fund.

(f) (1) Except as provided in paragraph (2), the balance of any loan made from the fund or its predecessor funds which remains unpaid on September 22, 1983, except any portion which is delinquent, and all loans made from the fund on or after that date, shall bear interest at a rate of 7 percent per annum.

(2) The department may reduce or eliminate interest on the loans, if, in the exercise of sound discretion, the department determines that action is necessary for the provision of decent housing to very low income households, as described in Section 50105. However, if the department eliminates interest on a loan, it shall charge a loan origination fee not to exceed 2 percent of the loan amount.

(g) The department may make predevelopment loans or land purchase loans for the development of mobilehome parks and manufactured housing subdivisions.

SEC. 18. Section 50663 of the Health and Safety Code, as amended by Section 12 of Chapter 94 of the Statutes of 1994, is repealed.

SEC. 19. Section 50667 of the Health and Safety Code, as amended by Section 13 of Chapter 94 of the Statutes of 1994, is repealed.

SEC. 20. Section 50837 of the Health and Safety Code, as amended by Section 14 of Chapter 94 of the Statutes of 1994, is repealed.

SEC. 21. Section 50900 of the Health and Safety Code, as amended by Section 14.6 of Chapter 94 of the Statutes of 1994, is repealed.

SEC. 22. Section 50900.1 of the Health and Safety Code is repealed.

SEC. 23. Section 50901 of the Health and Safety Code, as amended by Section 15 of Chapter 94 of the Statutes of 1994, is repealed.

SEC. 24. Section 50902 of the Health and Safety Code, as amended by Section 16 of Chapter 94 of the Statutes of 1994, is repealed.

SEC. 24.5. Section 50902 of the Health and Safety Code, as amended by Section 31 of Chapter 749 of the Statutes of 1994, is repealed.

SEC. 25. Section 50908 of the Health and Safety Code, as amended by Section 16.5 of Chapter 94 of the Statutes of 1994, is repealed.

SEC. 26. Section 51052 of the Health and Safety Code is repealed.

SEC. 27. Section 51058 of the Health and Safety Code is amended to read:

51058. (a) The agency may renegotiate, refinance, foreclose, or contract for the foreclosure of, any mortgage in default and may waive any default or consent to the modification of the terms of any mortgage. With respect to housing developments, the agency shall require that mortgage servicing and foreclosure practices, including forbearance and recasting of mortgages in default, conform to agency policies or resolutions.

(b) The agency may commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement and may bid for and purchase property sold in satisfaction thereof at any foreclosure or other sale or may otherwise acquire and take possession of that property. Subject to any agreement with bondholders, the agency may operate, manage, lease, dispose of, and otherwise deal with that property in such manner as may be necessary to protect the interest of the agency and the holders of its bonds.

SEC. 28. Chapter 5.5 (commencing with Section 51260) of Part 3 of Division 31 of the Health and Safety Code is repealed.

SEC. 29. Chapter 9 (commencing with Section 51450) of Part 3 of Division 31 of the Health and Safety Code is repealed.

SEC. 30. Part 6.1 (commencing with Section 52534) of Division 31 of the Health and Safety Code is repealed.

SEC. 31. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 581

An act to amend Sections 1357 and 1357.50 of the Health and Safety Code, and to amend Sections 10198.6 and 10700 of the Insurance Code, relating to health care coverage.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 1357 of the Health and Safety Code, as amended by Section 1 of Chapter 336 of the Statutes of 1997, is amended to read:

1357. As used in this article:

(a) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health care plan contract covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition pursuant to subdivision (o).

(b) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, at the small employer's regular places of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business and included as employees under a health care plan contract of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee as defined in this paragraph who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer.

(2) Any member of a guaranteed association as defined in subdivision (o).

(c) "In force business" means an existing health benefit plan contract issued by the plan to a small employer.

(d) "Late enrollee" means an eligible employee or dependent who has declined enrollment in a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's plan contract and who subsequently requests enrollment in the plan, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee, any other person eligible for coverage through a guaranteed association pursuant to subdivision (o), or dependent shall not be considered a late enrollee if: (1) the

individual meets all of the following: (A) he or she was covered under another employer health benefit plan or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll; (B) he or she certified at the time of the initial enrollment that coverage under another employer health benefit plan or no share-of-cost Medi-Cal coverage was the reason for declining enrollment, provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee; (C) he or she has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, legal separation, divorce, or loss of no share-of-cost Medi-Cal coverage; and (D) he or she requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan; (2) the employer offers multiple health benefit plans and the employee elects a different plan during an open enrollment period; (3) a court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan; (4) (A) in the case of an eligible employee as defined in paragraph (1) of subdivision (b), the plan cannot produce a written statement from the employer stating that the individual or the person through whom the individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed, acknowledgment of an explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3); (B) in the case of an association member who did not purchase coverage through a guaranteed association, the plan cannot produce a written statement from the association stating that the association sent a written notice in boldface type to all potentially eligible association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or paragraph (2)

or (3); or (C) in the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or paragraph (2) or (3), or that he or she recently had a change in status that would make him or her eligible and that application for enrollment was made within 30 days of the change; (5) the individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.621 shall apply; or (6) the individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days after notification of this loss of coverage.

(e) "New business" means a health care service plan contract issued to a small employer that is not the plan's in force business.

(f) "Preexisting condition provision" means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the employee's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(g) "Creditable coverage" means:

(1) 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 not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(h) "Rating period" means the period for which premium rates established by a plan are in effect and shall be no less than six months.

(i) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(j) "Risk adjustment factor" means the percentage adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard cost of services. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(k) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family composition of the employee, plus the health benefit plan selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30
30–39
40–49
50–54
55–59
60–64
65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the plan contract will be primary or secondary to benefits provided by the federal Medicare program pursuant to Title XVIII of the federal Social Security Act.

(2) Small employer health care service plans shall base rates to small employers using no more than the following family size categories:

(A) Single.

(B) Married couple.

(C) One adult and child or children.

(D) Married couple and child or children.

(3) (A) In determining rates for small employers, a plan that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county, and divide no county into more than two regions. Plans shall be deemed to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions established pursuant to this section shall, as a group, cover the entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) In determining rates for small employers, a plan that does not operate statewide shall use no more than the number of geographic regions in the state than is determined by the following formula: the population, as determined in the last federal census, of all counties that are included in their entirety in a plan's service area divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous. No plan shall have less than one geographic area.

Nothing in this section shall be construed to require a plan to establish a new service area or to offer health coverage on a statewide basis, outside of the plan's existing service area.

(*l*) "Small employer" means either of the following:

(1) Any person, firm, proprietary or nonprofit corporation, partnership, public agency, or association that is actively engaged in business or service, that, on at least 50 percent of its working days during the preceding calendar quarter or preceding calendar year, employed at least two, but no more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health care service plan contracts, and in which a bona fide employer-employee relationship exists. In determining whether to apply the calendar quarter or calendar year test, a health care service plan shall use the test that ensures eligibility if only one test would establish eligibility. However, for purposes of subdivisions (a), (b), and (c) of Section

1357.03, the definition shall include employers with at least three eligible employees until July 1, 1997, and two eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined tax return for purposes of state taxation shall be considered one employer. Subsequent to the issuance of a health care service plan contract to a small employer pursuant to this article, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided in this article, provisions of this article that apply to a small employer shall continue to apply until the plan contract anniversary following the date the employer no longer meets the requirements of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (n), that purchases health coverage for members of the association.

(m) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(n) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria, and that (1) includes one or more small employers as defined in paragraph (1) of subdivision (*l*), (2) does not condition membership directly or indirectly on the health or claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered to the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5) has been in active existence on January 1, 1992, and for at least five years prior to that date, (6) has included health insurance as a membership benefit for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any plan contract that is purchased to all individual members and employer members in this state, (9) includes any member choosing to enroll in the plan contracts offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the health care service plan with which it contracts. The requirement of 1,000 persons may be met if component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a contract issued by a plan is with an association or a trust formed for, or sponsored by, an association to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(o) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health coverage through the association. At the association's discretion, it also may include employees of association members, association staff, retired members, retired employees of members, and surviving spouses and dependents of deceased members. However, if an association chooses to include these persons as members of the guaranteed association, the association shall make that election in advance of purchasing a plan contract. Health care service plans may require an association to adhere to the membership composition it selects for up to 12 months.

(p) "Affiliation period" means a period that, under the terms of the health care service plan contract, must expire before health care services under the contract become effective.

SEC. 2. Section 1357.50 of the Health and Safety Code, as amended by Section 7 of Chapter 336 of the Statutes of 1997, is amended to read:

1357.50. For purposes of this article:

(a) "Health benefit plan" means any individual or group, insurance policy or health care service plan contract, that provides medical, hospital, and surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer; provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible

employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment that coverage under another employer health benefit plan or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health benefit plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, divorce, or loss of no share-of-cost Medi-Cal coverage.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan. The health benefit plan shall enroll a dependent child within 30 days after receipt of a court order or request from the district attorney, either parent or the person having custody of the child as defined in Section 3751.5 of the Family Code, the employer, or the group administrator. In the case of children who are eligible for medicaid, the State Department of Health Services may also make the request.

(4) The plan cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in bold type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a

six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision, and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.621 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days of notification of this loss of coverage.

(c) "Preexisting condition provision" means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the enrollee's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) "Creditable coverage" means:

(1) Any individual or group policy, contract or program, that is written or administered by a disability insurance company, nonprofit hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital and surgical care.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(e) "Waivered condition" means a contract provision that excludes coverage for charges or expenses incurred during a specified period of time for one or more specific, identified, medical conditions.

SEC. 3. Section 10198.6 of the Insurance Code, as amended by Section 15 of Chapter 336 of the Statutes of 1997, is amended to read:

10198.6. For purposes of this article:

(a) "Health benefit plan" means any group or individual policy or contract that provides medical, hospital, and surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer; provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment that coverage under another employer health benefit plan or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health benefit plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, legal separation, divorce, or loss of no share-of-cost Medi-Cal coverage.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan.

(4) The carrier cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the carrier to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 10116.5 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days of notification of this loss of coverage.

(c) "Preexisting condition provision" means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) "Creditable coverage" means:

(1) Any individual or group policy, contract or program, that is written or administered by a disability insurance company, health care service plan, fraternal benefits society, self-insured employer

plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital and surgical care.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subsection (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(e) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

SEC. 4. Section 10700 of the Insurance Code, as amended by Section 20 of Chapter 336 of the Statutes of 1997, is amended to read:

10700. As used in this chapter:

(a) "Agent or broker" means a person or entity licensed under Chapter 5 (commencing with Section 1621) of Part 2 of Division 1.

(b) "Benefit plan design" means a specific health coverage product issued by a carrier to small employers, to trustees of associations that include small employers, or to individuals if the coverage is offered through employment or sponsored by an

employer. It includes services covered and the levels of copayment and deductibles, and it may include the professional providers who are to provide those services and the sites where those services are to be provided. A benefit plan design may also be an integrated system for the financing and delivery of quality health care services which has significant incentives for the covered individuals to use the system.

(c) "Board" means the Major Risk Medical Insurance Board.

(d) "Carrier" means any disability insurance company or any other entity that writes, issues, or administers health benefit plans that cover the employees of small employers, regardless of the situs of the contract or master policyholder. For the purposes of Articles 3 (commencing with Section 10719) and 4 (commencing with Section 10730), "carrier" also includes health care service plans.

(e) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health benefit plan covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition pursuant to subdivision (z).

(f) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, in the small employer's regular place of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business, and they are included as employees under a health benefit plan of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee as defined in this paragraph who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer.

(2) Any member of a guaranteed association as defined in subdivision (z).

(g) "Enrollee" means an eligible employee or dependent who receives health coverage through the program from a participating carrier.

(h) "Financially impaired" means, for the purposes of this chapter, a carrier that, on or after the effective date of this chapter, is not insolvent and is either:

(1) Deemed by the commissioner to be potentially unable to fulfill its contractual obligations.

(2) Placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(i) "Fund" means the California Small Group Reinsurance Fund.

(j) "Health benefit plan" means a policy or contract written or administered by a carrier that arranges or provides health care benefits for the covered eligible employees of a small employer and their dependents. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, 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.

(k) "In force business" means an existing health benefit plan issued by the carrier to a small employer.

(*l*) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's health benefit plan and who subsequently requests enrollment in the plan, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee, another person eligible for coverage through a guaranteed association pursuant to subdivision (z), or dependent shall not be considered a late enrollee if: (1) the individual meets all of the following: (A) was covered under another employer health benefit plan or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll; (B) certified at the time of the initial enrollment that coverage under another employer health benefit plan or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee; (C) has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual, or of a person through whom the individual was covered as a dependent, the termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, divorce, or loss of no

share-of-cost Medi-Cal coverage; and (D) requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan; (2) the individual is employed by an employer who offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; (3) a court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan; (4) (A) in the case of an eligible employee as defined in paragraph (1) of subdivision (f), the carrier cannot produce a written statement from the employer stating that the individual or the person through whom an individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed acknowledgment of, an explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the carrier to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the individual meets the criteria specified in paragraph (1), (2), or (3); (B) in the case of an eligible employee who is a guaranteed association member, the plan cannot produce a written statement from the guaranteed association stating that the association sent a written notice in boldface type to all association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or paragraph (2) or (3); or (C) in the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or paragraph (2) or (3), or that he or she recently had a change in status that would make him or her eligible and that application for coverage was made within 30 days of the change; (5) the individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.62 shall apply; or (6) the individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days after notification of this loss of coverage.

(m) "New business" means a health benefit plan issued to a small employer that is not the carrier's in force business.

(n) "Participating carrier" means a carrier that has entered into a contract with the program to provide health benefits coverage under this part.

(o) "Plan of operation" means the plan of operation of the fund, including articles, bylaws and operating rules adopted by the fund pursuant to Article 3 (commencing with Section 10719).

(p) "Program" means the Health Insurance Plan of California.

(q) "Preexisting condition provision" means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(r) "Creditable coverage" means:

(1) 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 not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service

Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(s) "Rating period" means the period for which premium rates established by a carrier are in effect and shall be no less than six months.

(t) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(u) "Risk adjustment factor" means the percent adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard claims. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(v) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family size of the employee, plus the benefit plan design selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30
30–39
40–49
50–54
55–59
60–64
65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the health benefit plan will be primary or secondary to benefits provided by the federal Medicare program pursuant to Title XVIII of the federal Social Security Act.

(2) Small employer carriers shall base rates to small employers using no more than the following family size categories:

(A) Single.

(B) Married couple.

(C) One adult and child or children.

(D) Married couple and child or children.

(3) (A) In determining rates for small employers, a carrier that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and shall divide no county into more than two regions. Carriers shall be

deemed to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions established pursuant to this section shall, as a group, cover the entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) In determining rates for small employers, a carrier that does not operate statewide shall use no more than the number of geographic regions in the state than is determined by the following formula: the population, as determined in the last federal census, of all counties which are included in their entirety in a carrier's service area divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous. No carrier shall have less than one geographic area.

(w) "Small employer" means either of the following:

(1) Any person, proprietary or nonprofit firm, corporation, partnership, public agency, or association that is actively engaged in business or service that, on at least 50 percent of its working days during the preceding calendar quarter, or preceding calendar year, employed at least two, but not more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining whether to apply the calendar quarter or calendar year test, the insurer shall use the test that ensures eligibility if only one test would establish eligibility. However, for purposes of subdivisions (b) and (h) of Section 10705, the definition shall include employers with at least three eligible employees until July 1, 1997, and two eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined income tax return for purposes of state taxation shall be considered one employer. Subsequent to the issuance of a health benefit plan to a small employer pursuant to this chapter, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of this chapter that apply to a small employer shall continue to apply until the health benefit plan anniversary following the date the employer no longer meets the requirements of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (y), that purchases health coverage for members of the association.

(x) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(y) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria which (1) includes one or more small employers as defined in paragraph (1) of subdivision (w), (2) does not condition membership directly or indirectly on the health or claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered by the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5) has been in active existence on January 1, 1992, and for at least five years prior to that date, (6) has been offering health insurance to its members for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any benefit plan design that is purchased to all individual members and employer members in this state, (9) includes any member choosing to enroll in the benefit plan design offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the carrier with which it contracts. The requirement of 1,000 persons may be met if component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a master policy by an admitted insurer is delivered directly to the association or a trust formed for or sponsored by an association to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(z) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health coverage through the association. At the association's discretion, it may also include employees of association members, association staff, retired members, retired employees of members, and surviving

spouses and dependents of deceased members. However, if an association chooses to include those persons as members of the guaranteed association, the association must so elect in advance of purchasing coverage from a plan. Health plans may require an association to adhere to the membership composition it selects for up to 12 months.

(aa) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 582

An act to amend Section 51226.3 of the Education Code, relating to educational curriculum.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 51226.3 of the Education Code is amended to read:

51226.3. (a) The State Department of Education shall incorporate, into publications that provide examples of curriculum resources for teacher use, those materials developed by publishers of nonfiction, trade books, and primary sources, or other public or private organizations, that are age-appropriate and consistent with the subject frameworks on history and social science that deal with civil rights, human rights violations, genocide, slavery, and the Holocaust.

(b) The Legislature encourages all state and local professional development activities to provide teachers with content background and resources to assist in teaching about civil rights, human rights violations, genocide, slavery, and the Holocaust.

(c) The Legislature encourages all state and local professional development activities to provide teachers with content background and resources to assist in teaching about the Great Irish Famine of 1845-50.

(d) The Great Irish Famine of 1845–50 shall be considered in the next cycle in which the history/social science curriculum framework and its accompanying instructional materials are adopted.

CHAPTER 583

An act to amend Section 11005.3 of the Revenue and Taxation Code and to amend Section 2107 of the Streets and Highways Code, relating to taxation.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 11005.3 of the Revenue and Taxation Code is amended to read:

11005.3. (a) In the case of a city that incorporated on or after January 1, 1987, the Controller shall determine that the population of the city for its first 10 full fiscal years, and any portion of the first year in which the incorporation is effective if less than a full fiscal year, is the greater of either:

(1) The number of registered voters in the city multiplied by three. The number of registered voters shall be calculated as of the effective date of the incorporation of the city.

(2) The population determined pursuant to subdivision (c) of Section 11005.

(b) In the case of a city that incorporated on or after January 1, 1987, and for which the application for incorporation was filed with the executive officer of the local agency formation commission pursuant to subdivision (a) of Section 56828 of the Government Code on or after January 1, 1991, the Controller shall determine that the population of the city for its first seven full fiscal years, and any portion of the first year in which the incorporation is effective if less than a full fiscal year, is the greater of either:

(1) The number of registered voters in the city multiplied by three. The number of registered voters shall be calculated as of the effective date of the incorporation of the city.

(2) The population determined pursuant to subdivision (c) of Section 11005.

(c) In the case of unincorporated territory being annexed to a city, during the 10-year or seven-year period following incorporation, as the case may be, subsequent to the last federal census, or a

subsequent census validated by the population research unit of the Department of Finance, the unit shall determine the population of the annexed territory by the use of any federal decennial or special census or any estimate prepared pursuant to Section 2107.2 of the Streets and Highways Code. The population of the annexed territory as determined by the unit shall be added to the city's population as previously determined by the Controller pursuant to paragraph (1) or (2) of subdivision (a), or paragraph (1) or (2) of subdivision (b), as applicable.

(d) After the 10-year or seven-year period following incorporation, as the case may be, the Controller shall determine the population of the city pursuant to subdivision (c) of Section 11005.

(e) The amendments made to this section by the act adding this subdivision shall not apply with respect to either of the following:

(1) Any city that has adopted an ordinance or resolution, approved a ballot measure, or is subject to a consent decree or court order, that annually limits the number of housing units that may be constructed within the city.

(2) Any city that has not prepared and adopted a housing element in compliance with Section 65585 of the Government Code.

(f) This section shall become operative July 1, 1991.

SEC. 2. Section 2107 of the Streets and Highways Code is amended to read:

2107. A sum equal to the net revenues derived from a per gallon tax of 1.315 cents ($0.01315) under the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code), and 2.59 cents ($0.0259) under the Use Fuel Tax Law (Part 3 (commencing with Section 8601) of that division), shall be apportioned monthly to the cities and cities and counties of this state from the Highway Users Tax Account in the Transportation Tax Fund as provided in this section.

From that sum, the Controller shall allocate annually to each city that has filed a report containing the information prescribed by subdivision (c) of Section 2152, and that had expenditures in excess of five thousand dollars ($5,000) during the preceding fiscal year for snow removal, an amount equal to one-half of the amount of its expenditures for snow removal in excess of five thousand dollars ($5,000) during that fiscal year.

The balance of that sum from the Highway Users Tax Account shall be allocated to each city, including city and county, in the proportion that the total population of the city bears to the total population of all the cities in this state.

For the purpose of this section, except as otherwise provided in this paragraph, the population in each city is the population determined for that city in the manner specified in Sections 11005 and 11005.3 of the Revenue and Taxation Code. Commencing with the ninth fiscal year of a city described in subdivision (a) of Section 11005.3 of the Revenue and Taxation Code, and the sixth fiscal year of a city

described in subdivision (b) of that same section, the population in each city is the population determined for that city in the manner specified in Section 11005 of the Revenue and Taxation Code.

CHAPTER 584

An act relating to judges.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. The Judicial Council, in cooperation with the Public Employees' Retirement System, shall conduct a study for the Legislature with recommendations on the feasibility and desirability of increasing or eliminating the age at which a judge may retire without a reduction in retirement allowance under the Judges' Retirement System and Judges' Retirement System II. The report shall be submitted on or before March 1, 1998.

CHAPTER 585

An act relating to judges.

[Approved by Governor September 29, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. The Judicial Council, in cooperation with the Public Employees' Retirement system, shall conduct a study and prepare a report for the Governor and the Legislature with recommendations on the feasibility and desirability of providing service credit for judges sitting on assignment and who are on deferred retirement under the Judges' Retirement System and Judges' Retirement System II. The report shall be submitted on or before March 1, 1998.

CHAPTER 586

An act to amend Section 11105.3 of the Penal Code, relating to employees.

[Approved by Governor September 30, 1997. Filed with
Secretary of State September 30, 1997.]

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

SECTION 1. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (h) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) (1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of an offense specified in paragraph (1) of subdivision (h), and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other provision of law, any person who conveys or receives information in good faith conformity with this section is exempt from prosecution under Section 11142 or 11143 for that conveying or receiving of information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement of any other provision of law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall preclude an employer from requesting records of convictions for violating Section 261.5, 262, or 273.5 from the Department of Justice pursuant to this section.

(d) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(h) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the

defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(i) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

CHAPTER 587

An act to add and repeal Section 9250.19 of the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor September 30, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 9250.19 is added to the Vehicle Code, to read:

9250.19. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, upon the adoption of a resolution pursuant to this subdivision by any county board of supervisors, a fee of one dollar ($1) shall be paid at the time of registration, renewal, or supplemental application for apportioned registration pursuant to Article 4 (commencing with Section 8050) of Chapter 4 of every vehicle registered to an address within that county except those expressly exempted from payment of registration fees. The fees, after deduction of the administrative costs incurred by the department in carrying out this section, shall be paid quarterly to the Controller.

(2) A resolution adopted pursuant to paragraph (1) shall include findings as to the purpose of, and the need for, imposing the additional registration fee, and shall identify the date after which the fee shall no longer be imposed.

(b) Notwithstanding Section 13340 of the Government Code, the money paid to the Controller pursuant to subdivision (a) is

continuously appropriated, without regard to fiscal years, for disbursement by the Controller to each county that has adopted a resolution pursuant to subdivision (a), based upon the number of vehicles registered, or whose registration is renewed, to an address within that county, or supplemental application for apportioned registration, and, upon appropriation by the Legislature, for the administrative costs of the Controller incurred under this section.

(c) Money allocated to a county pursuant to subdivision (b) shall be expended exclusively to fund programs that enhance the capacity of local law enforcement to provide automated mobile and fixed location fingerprint identification of individuals who may be involved in driving under the influence of alcohol or drugs in violation of Section 23152 or 23153, or vehicular manslaughter in violation of Section 191.5 of the Penal Code or subdivision (c) of Section 192 of the Penal Code, or any combination of those and other vehicle-related crimes, and other crimes committed while operating a motor vehicle.

(d) The data from any program funded pursuant to subdivision (c) shall be made available by the local law enforcement agency to any local public agency that is required by law to obtain a criminal history background of persons as a condition of employment with that local public agency. A local law enforcement agency that provides the data may charge a fee to cover its actual costs in providing that data.

(e) (1) No money collected pursuant to this section shall be used to offset a reduction in any other source of funds for the purposes authorized under this section.

(2) Funds collected pursuant to this section, upon recommendation of local or regional Remote Access Network Boards to the Board of Supervisors, shall be used exclusively for the purchase, by competitive bidding procedures, and the operation of equipment which is compatible with the Department of Justice's Cal-ID master plan, as described in Section 11112.2 of the Penal Code, and the equipment shall interface in a manner that is in compliance with the requirement described in the Criminal Justice Information Services, Electronic Fingerprint Transmission Specification, prepared by the Federal Bureau of Investigation and dated August 24, 1995.

(f) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2003, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts within the meaning of Section 17556 of the Government Code.

Furthermore, 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 588

An act to amend Sections 44237 and 45125 of, and to add Section 45125.1 to, the Education Code, relating to school employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. This act shall be known and may be cited as the "Michelle Montoya School Safety Act."

SEC. 2. Section 44237 of the Education Code is amended to read:

44237. (a) Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid California state teaching credential, or is not currently licensed by another state agency that requires a criminal record summary, to submit two sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation.

(b) As used in this section, "employer" means every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(c) (1) Upon receiving the identification cards, the Department of Justice shall ascertain whether the applicant has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department and forward the information to the employer designated by the applicant submitting the fingerprints no more than 15 working days after receiving the identification cards. The Department of Justice shall not forward records of criminal proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department

of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the employer designated by the applicant submitting the fingerprints that it cannot so ascertain the required information. This notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer designated by the applicant submitting the fingerprints by first-class mail. If the employer designated by the applicant submitting the fingerprints is notified by the Department of Justice that it cannot ascertain the required information about a person, the employer may not employ that person until the Department of Justice ascertains that information. At its discretion, the Department of Justice may forward one copy of the fingerprint cards submitted to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the applicant.

(d) An employer shall not employ a person until the Department of Justice completes its obligations as set forth in this section.

(e) A person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall not employ person who has been convicted of a violent or serious felony.

(f) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(g) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(h) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(i) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the county in which he or she is a resident.

(j) The Commission on Teacher Credentialing shall send on a monthly basis to each private school a list of all teachers who have had their state teaching credential revoked or suspended. The list shall

be identical to the list compiled for public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

(k) The Department of Justice may charge each applicant for a criminal record summary a reasonable fee to cover costs associated with the processing, reviewing, and supplying of the criminal record summary as required by this section. In no event shall the fee exceed the actual costs incurred by the department.

SEC. 3. Section 45125 of the Education Code is amended to read:

45125. (a) The governing board of any school district shall require each person to be employed in a position not requiring certification qualifications, except a secondary school pupil employed in a temporary or part-time position by the governing board of the school district having jurisdiction over the school attended by the pupil, to have two 8″ x 8″ fingerprint cards bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description of the applicant prepared by a local public law enforcement agency having jurisdiction in the area of the school district, which agency shall transmit the cards, together with the fee hereinafter specified, to the Department of Justice; except that any district, or districts with a common board, may process the fingerprint cards if the district so elects. "Local public law enforcement agency" as used herein includes any school district and as used in Section 45126 requires the Department of Justice to provide to any school district, upon application, information pertaining only to applicants for employment by the district, including applicants who are employees of another district.

(b) (1) Upon receiving the identification cards, the Department of Justice shall ascertain whether the applicant has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department and forward the information to the local public law enforcement agency submitting the applicant's fingerprints no more than 15 working days after receiving the identification cards. The Department of Justice shall not forward records of criminal proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the school district that it cannot so ascertain the required information. This notification shall be delivered by telephone and shall be confirmed in writing and delivered to the

school district by first-class mail. If a school district is notified by the Department of Justice that it cannot ascertain the required information about a person, the school district may not employ that person until the Department of Justice ascertains that information. At its discretion, the Department of Justice may forward one copy of the fingerprint cards submitted to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the applicant or employee.

(c) The governing board of a school district shall not employ a person until the Department of Justice completes its obligations as set forth in this section and Sections 45125.5 and 45126, except that this subdivision does not apply to pupils who are to be employed at the school they attend.

(d) The governing board of each district shall forward a request to the Department of Justice indicating the number of current employees, except pupils employed at the school they attend, who have not completed the requirements of this section. The Department of Justice shall direct when the cards are to be forwarded to it for processing which in no event shall be later than 30 working days from the date of the amendment of this section by Assembly Bill 1610 of the 1997–98 Regular Session. The Department of Justice shall process these cards within 30 working days of their receipt and any cards in its possession on the date of the amendment of this section by Assembly Bill 1610 of the 1997–98 Regular Session within 30 working days of that date. School districts that have previously submitted identification cards for current employees to either the Department of Justice or the Federal Bureau of Investigation shall not be required to further implement the provisions of this section as it applies to those employees.

(e) A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury or forfeiture of bail is deemed to be a conviction within the meaning of this section, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

(f) The governing board shall provide the means whereby the identification cards may be completed and shall charge a fee determined by the Department of Justice to be sufficient to reimburse the department for the costs incurred in processing the application. The amount of the fee shall be forwarded to the Department of Justice, with two copies of applicant's fingerprint cards. The governing board may collect an additional fee not to exceed two dollars ($2) payable to the local public law enforcement agency taking the fingerprints and completing the data on the fingerprint cards. The additional fees shall be transmitted to the city or county treasury. If an applicant is subsequently hired by the board within 30 days of the application, the fee may be reimbursed to the

applicant. Funds not reimbursed to applicants shall be credited to the general fund of the district. If the fingerprint cards forwarded to the Department of Justice are those of a person already in the employ of the governing board, the district shall pay the fee required by this section, which fee shall be a proper charge against the general fund of the district, and no fee shall be charged the employee.

(g) This section applies to substitute and temporary employees regardless of length of employment.

(h) The governing board of each school district shall annually on September 30 submit to the Department of Justice a list of all its employees for the prior school year and shall indicate whether or not a criminal background check pursuant to this section has been completed on each employee.

SEC. 4. Section 45125.1 is added to the Education Code, to read:

45125.1. (a) Except as provided in subdivisions (b) and (c), if the employees of any entity that has a contract with a school district, as defined in Section 41302.5, to provide any of the following or similar services may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the department for its costs incurred in processing the application:

(1) Janitorial.
(2) Administrative.
(3) Landscape.
(4) Transportation.
(5) Food-related.

(b) This section shall not apply to an entity providing services to a school district in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

(c) This section shall not apply to an entity providing services to a school district when the school district determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee has limited contact with pupils, the school district shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. In these cases, the school district shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees.

(d) The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it pursuant to subdivision (a) has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department. Upon implementation of an electronic fingerprinting

system with terminals located statewide and managed by the Department of Justice, the department shall ascertain the information required pursuant to this section within three working days. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it pursuant to subdivision (a) has a pending criminal proceeding for a felony as defined in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1, the department shall notify the employer designated by the individual of the criminal information pertaining to the individual. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer by first-class mail.

(e) An entity having a contract as specified in subdivision (a) shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Section 45122.1.

(f) An entity having a contract as specified in subdivision (a) shall certify in writing to the governing board of the school district that none of its employees who may come in contact with pupils have been convicted of a felony as defined in Section 45122.1. The entity shall provide a list of the names of its employees who may come in contact with pupils to the governing board of the school district which shall provide relevant lists of employee names to the appropriate schools within its jurisdiction.

(g) An entity having a contract as specified in subdivision (a) on the effective date of this section shall complete the requirements of this section within 90 days of that date.

SEC. 5. This act shall become operative only if Assembly Bill 1612 of the 1997–98 Regular Session is enacted.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

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:

Because of the recent death of Michelle Montoya and in order to preserve the safety of other children at school, it is necessary for this act to take effect immediately.

CHAPTER 589

An act to add Sections 44332.6, 44346.1, 44830.1, and 45122.1 to the Education Code, relating to school employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 44332.6 is added to the Education Code, to read:

44332.6. (a) (1) Before issuing a temporary certificate pursuant to Section 44332, a county or city and county board of education shall obtain a criminal record summary about the applicant from the Department of Justice and shall not issue a temporary certificate if the applicant has been convicted of a violent or serious felony.

(2) Before issuing a temporary certificate of clearance pursuant to Section 44332.5, a school district shall obtain a criminal record summary about the applicant from the Department of Justice and shall not issue a temporary certificate of clearance if the applicant has been convicted of a violent or serious felony.

(b) This section applies to any violent or serious offense which, if committed in this state would have been punishable as a violent or serious felony.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivisions (a) and (b), a person shall not be denied a temporary certificate or a temporary certificate of clearance solely on the basis that he or she has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

SEC. 2. Section 44346.1 is added to the Education Code, to read:

44346.1. (a) The commission shall deny any application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony and shall revoke any credential issued to a person whose employment has been denied employment or terminated pursuant to Section 44830.1.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivision (a), a person shall not be denied a credential nor shall a credential be revoked solely on the basis that the applicant or holder has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

SEC. 3. Section 44830.1 is added to the Education Code, to read:

44830.1. (a) In addition to any other prohibition or provision, no person who has been convicted of a violent or serious felony shall be employed by a school district in a position requiring certification qualifications or supervising positions requiring certification qualifications. A school district shall not retain in employment a current certificated employee who has been convicted of a violent or serious felony, and who is a temporary employee, a substitute employee, or a probationary employee serving before March 15 of the employee's second probationary year.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c) (1) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(2) For purposes of this section, the term "school district" has the same meaning as defined in Section 41302.5.

(d) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, the department shall notify the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the school district by first-class mail. The Department of Justice also shall send by first-class mail a copy of the criminal information to the Commission on Teacher Credentialing.

(e) Notwithstanding subdivision (a), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(f) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(g) Notwithstanding any other provision of law, when the Department of Justice notifies a school district by telephone that a current temporary employee, substitute employee, or probationary employee serving before March 15 of the employee's second probationary year, has been convicted of a violent or serious felony, that employee shall immediately be placed on leave without pay. When the school district receives written notification of the fact of conviction from the Department of Justice, the employee shall be terminated automatically and without regard to any other procedure for termination specified in this code or school district procedures unless the employee challenges the record of the Department of Justice and the Department of Justice withdraws in writing its notification to the school district. Upon receipt of written withdrawal of notification from the Department of Justice, the employee shall immediately be reinstated with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement.

(h) Notwithstanding Section 47610, this section applies to a charter school.

SEC. 4. Section 45122.1 is added to the Education Code, to read:

45122.1. (a) In addition to any other prohibition or provision, no person who has been convicted of a violent or serious felony shall be employed by a school district pursuant to this chapter. A school district shall not retain in employment a current classified employee who has been convicted of a violent or serious felony, and who is a temporary, substitute, or a probationary employee who has not attained permanent status.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c) (1) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(2) For purposes of this section, the term "school district" has the same meaning as defined in Section 41302.5.

(d) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, the department shall notify

the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the school district by first-class mail.

(e) Notwithstanding subdivision (a), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent of serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(f) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(g) Notwithstanding any other provision of law, when the Department of Justice notifies a school district by telephone that a current temporary, substitute, or probationary employee who has not attained permanent status, has been convicted of a violent or serious felony, that employee shall immediately be placed on leave without pay. When the school district receives written notification of the fact of conviction from the Department of Justice, the employee shall be terminated automatically and without regard to any other procedure for termination specified in this code or school district procedures unless the employee challenges the record of the Department of Justice and the Department of Justice withdraws in writing its notification to the school district. Upon receipt of written withdrawal of notification from the Department of Justice, the employee shall immediately be reinstated with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement.

(h) Notwithstanding Section 47610, this section applies to a charter school.

SEC. 5. (a) Upon an appropriation by the Legislature for the purposes of this section, the Department of Justice shall implement and manage an electronic fingerprinting system with terminals located statewide. The statewide terminals shall be used to facilitate electronic fingerprinting of all individuals required by law to obtain a criminal history background check as a condition of employment, licensing, or certification.

(b) Of any amount appropriated by the Legislature prior to January 1, 1998, for the purposes of this section, one million dollars ($1,000,000) shall be utilized for the purchase of the equipment, including printers and the necessary software, to provide eligible

employers with the capability of electronically receiving the results of criminal history background checks from the Department of Justice. If the amount appropriated is less than two million dollars ($2,000,000), then an amount not to exceed 50 percent of the appropriation shall be used for the purpose of this section. These funds shall be expended not sooner than March 15, 1998, and not sooner than 30 days after notification in writing from the Director of Finance to the chairperson of the Joint Legislative Budget Committee detailing an expenditure plan for the funds. Any funds not identified by the expenditure plan for the purpose of purchasing equipment pursuant to this subdivision shall be used for the purchase of additional terminals as required by subdivision (a) and subject to the provisions of this act.

SEC. 6. (a) The terminals to be purchased pursuant to Section 5 may only be provided to state agencies and local governments that have the statutory authority to receive confidential criminal history information.

(b) Any state agency or local government that is provided with a terminal pursuant to this act shall maintain and operate the terminal as a condition of receipt.

(c) Within 60 days of enactment of this act, the Department of Justice shall develop guidelines for the approval process for applicant agencies seeking terminals that prioritizes the applications according to, but not limited to, the following criteria:

(1) School districts and county offices of education.

(2) If the agency applying for terminals is an employer that is required by statute to obtain criminal history background checks of employees, the expected number of applicants seeking fingerprinting services.

(3) Agencies that serve multiple employers.

(4) The expected availability of the terminal by the applicant agency, including proposed days and hours of operation.

(5) Proper geographic representation throughout the state.

(d) In addition, as a condition of receiving a terminal pursuant to this act, each applicant agency shall include with its application an identification of the resources, including staffing and facility space, that would be committed to the maintenance and operation of the terminal.

(e) Notwithstanding subdivision (c) and upon request of each of the three school districts that have both the largest average daily attendance and a school district police department, at least one terminal shall be located in the district office of each of those school districts.

(f) As a condition of receiving a terminal, a state agency or local government shall waive any rights it otherwise may have to submit a claim to the state for reimbursement of the maintenance and operating costs of the terminal.

SEC. 7. On or before March 15, 1998, the Department of Justice is to report to the chairperson of the Joint Legislative Budget Committee and the chairpersons of the fiscal committees of the Legislature on the status of implementing the provisions of this act. The report shall include, but not be limited to, the following:

(a) The number, location, and cost of all terminals installed, or expected to be installed, for submitting fingerprints to the Department of Justice pursuant to this act.

(b) The estimated number, including potential locations, and cost of the necessary equipment and software for employers, as provided by this act, to electronically receive criminal history information from the Department of Justice.

(c) What additional resources, if any, including equipment, software, staffing, and maintenance may be necessary to complete the provisions of this act.

SEC. 8. This act shall become operative only if Assembly Bill 1610 of the 1997–98 Regular Session is enacted.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the safety of pupils and school employees, it is necessary for this act to take effect immediately.

CHAPTER 590

An act to amend Section 288.2 of the Penal Code, relating to crimes.

[Approved by Governor September 30, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 288.2 of the Penal Code is amended to read:

288.2. (a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter, as defined in Section 313, to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent or for the purpose of seducing a minor, is guilty of a public offense and shall be punished by imprisonment in the state prison or in a county jail.

A person convicted of a second and any subsequent conviction for a violation of this section is guilty of a felony.

(b) Every person who, with knowledge that a person is a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by electronic mail, the Internet, as defined in Section 17538 of the Business and Professions Code, or a commercial online service, any harmful matter, as defined in Section 313, to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent, or for the purpose of seducing a minor, is guilty of a public offense and shall be punished by imprisonment in the state prison or in a county jail.

A person convicted of a second and any subsequent conviction for a violation of this section is guilty of a felony.

(c) It shall be a defense to any prosecution under this section that a parent or guardian committed the act charged in aid of legitimate sex education.

(d) It shall be a defense in any prosecution under this section that the act charged was committed in aid of legitimate scientific or educational purposes.

(e) It does not constitute a violation of this section for a telephone corporation, as defined in Section 234 of the Public Utilities Code, a cable television company franchised pursuant to Section 53066 of the Government Code, or any of its affiliates, an Internet service provider, or commercial online service provider, to carry, broadcast, or transmit messages described in this section or perform related activities in providing telephone, cable television, Internet, or commercial online services.

CHAPTER 591

An act to add and repeal Section 4501.1 of the Penal Code, relating to battery.

[Approved by Governor September 30, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 4501.1 is added to the Penal Code, to read:

4501.1. (a) Every person confined in the state prison who commits a battery upon the person of any officer or employee of the state prison by gassing is guilty of aggravated battery and shall be punished as specified in Section 4501.5.

(b) For purposes of this section, "gassing" means intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any mixture of human excrement or other bodily fluids or substances.

(c) The warden or other person in charge of the state prison shall use every available means to immediately investigate all reported or suspected violations of subdivision (a). If there is probable cause to believe that the inmate has violated subdivision (a), the chief medical officer of the state prison, or his or her designee, may, when he or she deems it medically necessary to protect the health of an officer or employee who may have been subject to a violation of this section, order the inmate to receive an examination or test for hepatitis and tuberculosis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer. The results of any examination or test shall be provided to the officer or employee who was the target of the aggravated battery. Nothing in this subdivision shall be construed to otherwise supersede the operation of Title 8 (commencing with Section 7500).

(d) The warden or other person in charge of the state prison shall refer all reports of aggravated battery by gassing to the local district attorney for prosecution.

(e) The Department of Corrections shall report to the Legislature, by January 1, 2000, its findings and recommendations on gassing incidents at the state prison and the medical testing authorized by this section. The report shall include, but not be limited to, all of the following:

(1) The total number of gassing incidents at each state prison facility up to the date of the report.

(2) The disposition of each gassing incident, including the administrative penalties imposed and the number of incidents that are prosecuted and the result of those prosecutions, including any penalties imposed.

(3) A profile of the inmates who commit the aggravated batteries, including the number of inmates who have one or more prior serious or violent felony convictions.

(4) Efforts that the department has taken to limit these incidents, including staff training and the use of protective clothing and goggles.

(5) The results and costs of the medical testing authorized by this section.

(f) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

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 592

An act to amend Section 243 of the Penal Code, relating to crimes.

[Approved by Governor September 30, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine of not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(c) (1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars ($2,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment, or by imprisonment in the state prison for 16 months, or two or three years.

(2) When the battery specified in paragraph (1) is committed against a peace officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the battery is punishable by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding one year or in the state prison for 16 months, or two or three years, or by both that fine and imprisonment.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment in the state prison for two, three, or four years.

(e) (1) When a battery is committed against a spouse, person with whom the defendant is cohabiting, person who is the parent of the defendant's child, noncohabiting former spouse, fiancé, fiancée, or a person with whom the defendant currently has, or has previously had, a dating relationship, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail for a period of not more than one year, or by both. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as defined in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(3) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(f) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person who is either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a valid certificate or license in accordance with the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(4) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of

consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(5) "Injury" means any physical injury which requires professional medical treatment.

(6) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(7) "Lifeguard" means a person defined in paragraph (5) of subdivision (c) of Section 241.

(8) "Traffic officer" means any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(9) "Animal control officer" means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(10) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

(g) It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as People v. Corey, 21 Cal. 3d 738, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

CHAPTER 593

An act to amend Sections 12020 and 12020.5 of the Penal Code, relating to destructive devices.

[Approved by Governor September 30, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any

fléchette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag, or who carries concealed upon his or her person any explosive substance, other than fixed ammunition, or who carries concealed upon his or her person any dirk or dagger is punishable by imprisonment in a county jail not exceeding one year or in the state prison. However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) does not apply to any of the following:

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation, or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in

or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who

are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(15) Any plastic toy handgrenade, or any metal military practice handgrenade or metal replica handgrenade that is a relic, curio, memorabilia, or display item, that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as a grenade.

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined

in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fléchette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring,

elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least $2^1/_2$ inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects

likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 1.5. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fléchette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag, or who carries concealed upon his or her person any explosive substance, other than fixed ammunition, or who carries concealed upon his or her person any dirk or dagger is punishable by imprisonment in a county jail not exceeding one year or in the state prison. However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) does not apply to any of the following:

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the

Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by

Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers

and uniformed security guards when engaging in transactions with those persons.

(15) Any plastic toy handgrenade, or any metal military practice handgrenade or metal replica handgrenade that is a relic, curio, memorabilia, or display item, that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as a grenade.

(16) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(17) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(18) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fléchette dart" means a dart, capable of being fired from a firearm, which measures approximately one

inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least $2^1/_2$ inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the

component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 2. Section 12020.5 of the Penal Code is amended to read:

12020.5. It shall be unlawful for any person, as defined in Section 12277, to advertise the sale of any weapon or device whose possession is prohibited by Section 12020, 12220, 12280, 12303, 12320, 12321, 12355, or 12520 in any newspaper, magazine, circular, form letter, or open publication that is published, distributed, or circulated in this state, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 12020 of the Penal Code proposed by both this bill and AB 78. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 12020 of the Penal Code, and (3) this bill is enacted after AB 78, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because 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 594

An act to amend Sections 3030 and 7825 of the Family Code, relating to family law.

[Approved by Governor September 30, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 3030 of the Family Code is amended to read:

3030. (a) No person shall be granted custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) The court may order child support that is to be paid by a person subject to subdivision (a) or (b) to be paid through the district attorney's office, as authorized by Section 4573 of the Family Code and Section 11475.1 of the Welfare and Institutions Code.

(d) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interests of the child.

SEC. 2. Section 7825 of the Family Code is amended to read:

7825. (a) A proceeding under this part may be brought where both of the following requirements are satisfied:

(1) The child is one whose parent or parents are convicted of a felony.

(2) The facts of the crime of which the parent or parents were convicted are of such a nature so as to prove the unfitness of the parent or parents to have the future custody and control of the child.

(b) The mother of a child may bring a proceeding under this part against the father of the child, where the child was conceived as a result of an act in violation of Section 261 of the Penal Code, and where the father was convicted of that violation. For purposes of this subdivision, there is a conclusive presumption that the father is unfit to have custody or control of the child.

CHAPTER 595

An act to add Section 12523.6 to the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 12523.6 is added to the Vehicle Code, to read:

12523.6. (a) (1) On and after March 1, 1998, no person who is employed primarily as a driver of a motor vehicle for hire that is used for the transportation of persons with developmental disabilities, as defined in subdivision (a) of Section 4512 of the Welfare and Institutions Code, shall operate that motor vehicle unless that person has in his or her possession a valid driver's license of the appropriate class endorsed for passenger transportation and a valid special driver certificate issued by the department.

(2) This subdivision only applies to a person who is employed by a business or a nonprofit organization or agency.

(b) The special driver certificate shall be issued only to an applicant who meets all of the following requirements:

(1) The applicant has cleared a criminal history background check by the Department of Justice and, if applicable, by the Federal Bureau of Investigation. Any required fingerprinting undertaken for purposes of the criminal history background check shall be conducted by the Department of the California Highway Patrol. Applicant fingerprint forms shall be processed and returned to the area office of the Department of the California Highway Patrol from which they originated not later than 15 working days from the date on which the fingerprint forms were received by the Department of Justice, unless circumstances, other than the administrative duties of the Department of Justice, warrant further investigation. Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days.

(2) The applicant has paid, in addition to the fees authorized in Section 2427, a fee of twenty-five dollars ($25) for an original certificate and twelve dollars ($12) for the renewal of that certificate to the Department of the California Highway Patrol.

(c) A certificate issued under this section shall not be deemed a certification to operate a particular vehicle that otherwise requires a driver's license or endorsement for a particular class under this code.

(d) On or after March 1, 1998, no person who operates a business or a nonprofit organization or agency shall employ a person who is employed primarily as a driver of a motor vehicle for hire that is used for the transportation of persons with developmental disabilities unless the employed person operates the motor vehicle in compliance with subdivision (a).

(e) Nothing in this section precludes an employer of persons who are occasionally used as drivers of motor vehicles for the transportation of persons with developmental disabilities from requiring those persons, as a condition of employment, to obtain a special driver certificate pursuant to this section or precludes any volunteer driver from applying for a special driver certificate.

(f) As used in this section, a person is employed primarily as driver if that person performs at least 50 percent of his or her time worked including, but not limited to, time spent assisting persons onto and out of the vehicle, or at least 20 hours a week, whichever is less, as a compensated driver of a motor vehicle for hire for the transportation of persons with developmental disabilities.

(h) This section does not apply to any person who has successfully completed a background investigation prescribed by law, including, but limited to, health care transport vehicle operators, or to the operator of a taxicab regulated pursuant to Section 21100. This section does not apply to a person who holds a valid certificate, other than a farm labor vehicle driver certificate, issued under Section 12517.4 or 12527. This section does not apply to a driver who provides transportation on a noncommercial basis to persons with developmental disabilities.

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.

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

There have been numerous reports of crimes committed by drivers of vehicles for hire against persons with developmental disabilities. Many of these crimes could have been prevented if a thorough criminal background check had been undertaken prior to allowing those drivers to transport persons with developmental disabilities. In order to help prevent further crimes of this nature at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 596

An act to amend Section 18804 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 1997. Filed with Secretary of State September 30, 1997.]

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

SECTION 1. Section 18804 of the Revenue and Taxation Code is amended to read:

18804. (a) 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 enacted before January 1, 2001, deletes that date.

(b) If, in any calendar year, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than one hundred thousand dollars ($100,000) for taxable years beginning in 1999 or less than two hundred fifty thousand dollars ($250,000) for taxable years beginning in 2000, as may be applicable, then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.
